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Rules and Regulations

Federal Register

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 550, 595, and 610

RIN 3206-AI61

Pay Administration; Back Pay; Holidays; and Physicians' Comparability Allowances

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to reflect three changes in law that are already effective. The final regulations clarify that back pay awards are subject to a 6-year statute of limitations unless a shorter statute of limitations period applies. They also reflect a change in the designation of holidays for certain Federal employees working overseas. Finally, they reflect an increase the maximum physicians' comparability allowance from \$20,000 to \$30,000 per year for employees who have served as a Government physician for more than 24 months.

DATES: *Effective Date:* The regulations are effective on September 6, 2000.

Applicability Dates: The regulations apply on the first day of the first pay period beginning on or after September 6, 2000.

FOR FURTHER INFORMATION CONTACT: James R. Weddel, (202) 606-2858, FAX: (202) 606-0824, or email: payleave@opm.gov.

SUPPLEMENTARY INFORMATION: These final regulations reflect three changes in law. Section 1104 of Public Law 105-261, the Strom Thurmond National Defense Authorization Act, 1999 (October 17, 1998), amends the back pay law (5 U.S.C. 5596(b)). Section 1104 adds a new provision to clarify that back pay awards are subject to a 6-year statute of limitations unless a shorter

statute of limitations period applies. Section 1104 also adds a new provision to 5 U.S.C. 7121 to clarify that settlement of grievances and arbitration awards under 5 U.S.C. 7121 is subject to the same 6-year statute of limitations. This change in law became effective on October 17, 1998.

Section 7 of Public Law 105-266, the Federal Employees Health Care Protection Act of 1998 (October 19, 1998), amends 5 U.S.C. 5948(a). Section 7 increases the maximum physicians' comparability allowance (PCA) from \$20,000 to \$30,000 per year for an employee who has served as a Government physician for more than 24 months. Section 7 also provides that agencies may modify any PCA service agreement in effect on the effective date of the Act to increase the PCA for a physician up to the new maximum amount during the time remaining under the service agreement. However, section 7 provides that any modification of an existing service agreement to increase a PCA cannot cause the total PCA paid to the employee during the calendar year to exceed the new \$30,000 maximum or any other applicable limitation (e.g., the aggregate limitation on pay under 5 U.S.C. 5307). These changes became effective on October 19, 1998. The Office of Management and Budget advises that agencies may authorize a PCA in excess of \$20,000 only after revising their existing PCA plan and obtaining OMB approval of the changes.

Section 1107 of Public Law 105-261, the Strom Thurmond National Defense Authorization Act, 1999 (October 17, 1998), adds a new provision to 5 U.S.C. 6103 to change the designation of holidays for certain Federal employees who work at duty posts outside the United States. Section 1107 provides that whenever Monday is designated as a holiday under 5 U.S.C. 6103(a), the first regularly scheduled workday in the week is the holiday for a Federal employee at a duty post outside the United States whose basic workweek includes Monday, but is not the typical Monday through Friday work schedule found in the United States. The intent of this new provision of law is to create a 3-day weekend with a holiday on Sunday for Federal employees who work Sunday through Thursday with nonworkdays on Friday and Saturday.

This change in law became effective on October 17, 1998.

Interim regulations to reflect these three changes in law were published in the **Federal Register** on December 28, 1999 (64 FR 72457). The **Federal Register** notice provided that OPM must receive comments on the interim regulations within 60 days, or by February 28, 2000. No comments were received on the interim regulations. Therefore, the interim regulations are adopted as final without any substantive changes.

E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Parts 550, 595, and 610

Administrative practice and procedure, Claims, Government employees, Health professions, Holidays, Wages.

Office of Personnel Management.

Janice R. Lachance,
Director.

Accordingly, the interim regulations amending parts 550, 595, and 610 of title 5 of the Code of Federal Regulations, which were published at 64 FR 72457 on December 28, 1999, are adopted as final regulations with the following changes:

PART 610—HOURS OF DUTY

Subpart B—Holidays

1. The authority citation for part 610, subpart B, continues to read as follows:

Authority: 5 U.S.C. 6101; sec. 1(1) of E.O. 11228, 3 CFR, 1964-1965 Comp., p. 317.

2. Section 610.201 is revised to read as follows:

§ 610.201 Identification of holidays.

Agencies determine holidays under section 6103 of title 5, United States Code, and Executive Order 11582 of February 11, 1971.

3. In § 610.202, paragraph (a) is revised to read as follows:

§ 610.202 Determining the holiday.

* * * * *

(a) Except when employees are entitled to a different holiday under 5 U.S.C. 6103(b)(3), an employee's holiday is the day designated by 5 U.S.C. 6103(a) whenever part of the employee's basic workweek (as defined in § 610.102) or basic work requirement (as defined in 5 U.S.C. 6121(3)) is scheduled on that day.

* * * * *

[FR Doc. 00-19855 Filed 8-4-00; 8:45 am]

BILLING CODE 6325-01-P

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 927**

[Docket No. FV00-927-1 FR]

Winter Pears Grown in Oregon and Washington; Establishment of Quality Requirements for the Beurre D'Anjou Variety of Pears

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes quality requirements for the Beurre D'Anjou (Anjou) variety of pears under the winter pear marketing order. The marketing order regulates the handling of winter pears grown in Oregon and Washington and is administered locally by the Winter Pear Control Committee (Committee). This rule will require that Anjou variety pears shipped to North America during the period of August 15 through November 1 of each year be certified by the Federal-State Inspection Service as having their core/pulp temperature lowered to 35 degrees Fahrenheit or less and having an average pressure test of 14 pounds or less. Establishing quality requirements for Anjou pears will enhance the ripening process. This rule is expected to result in higher quality Anjou pears reaching the market and to benefit producers, handlers, and consumers. A minimum quantity exemption from the quality and inspection requirements is also provided.

EFFECTIVE DATE: August 15, 2000.

FOR FURTHER INFORMATION CONTACT:

Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, Marketing

Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

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

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 89 and Order No. 927, both as amended (7 CFR part 927), regulating the handling of winter pears grown in Oregon and Washington, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule establishes quality requirements under the order for Anjou variety pears. This rule will require that Anjou pears shipped to North America (Continental United States, Canada, or Mexico) during the period of August 15

through November 1 of each year, be certified by the Federal-State Inspection Service as having their core/pulp temperature lowered to 35 degrees Fahrenheit or less and having an average pressure test of 14 pounds or less. The quality and inspection requirements will only apply to shipments to these three markets because shipments to other important markets outside of North America are transported in cold storage containers and arrive after November 1. This rule will also establish a minimum quantity exemption under which Anjou pear shipments of 8,800 pounds or less on any one conveyance may be shipped without regard to the proposed inspection and quality requirements.

Section 927.51 of the order provides authority for the issuance, modification, suspension, or termination of regulations for grade, size, and quality for any variety of winter pears grown in any district during a specified period and for different requirements applicable to shipments for different export markets.

Section 927.60 provides that when such regulations are in effect, no person shall handle such pears unless they are inspected and certified by the Federal-State Inspection service as meeting such requirements. Section 927.60 further provides authority for the establishment of minimum quantity exemptions from such requirements.

Section 927.52 provides that any vote on size, grade, and quality regulations be conducted based upon an affirmative vote of not less than 80 percent of the applicable total number of votes for that variety. This section provides that for the Anjou variety of pears, each member shall have one vote as an individual and, in addition, shall have an equal share of the vote of the district represented by the member. Each district is given an additional vote for each 25,000 boxes of the average quantity of Anjou pears produced in the particular district and shipped therefrom during the immediately preceding three fiscal periods. Using this formula, there are 453 applicable total votes for Anjou pears.

At its meeting on March 30, and further discussed at subsequent meetings on May 4 and June 2, 2000, the Committee recommended the establishment of quality and inspection requirements for the Anjou variety of pears for shipments to North America from August 15 through November 1 of each year. The Committee recommended, with 83 percent (373 votes) of the applicable total number of votes voting in favor, that it be required that such pears have their core/pulp

temperature lowered to 35 degrees Fahrenheit or less and have an average pressure test of 14 pounds or less. The Committee, for over 20 years, has recommended that handlers of Anjou pears voluntarily comply with these two quality requirements because they are necessary for Anjou pears to ripen properly. In addition, the Committee has regularly provided handlers with research studies collected over the years supporting the importance of proper chilling for Anjou pears and the fruit being harvested and shipped at appropriate hardness.

While the voluntary program worked well for many years, an increasing number of handlers in recent years have not consistently complied with these voluntary recommendations. At these three meetings, all Committee members supported the need for Anjou pears meeting these minimum quality requirements prior to shipment to North American markets (Continental United States, Canada, or Mexico). The three members who voted against the establishment of quality regulations supported continuation of the voluntary program.

Anjou pears are unique to most other pear varieties because they are harvested in a mature, but unripe condition. For Anjou pears to ripen properly, these pears should be stored in cold storage facilities until their core/pulp temperature is reduced to 35 degrees Fahrenheit or less. Once the core/pulp temperature is reduced to 35 degrees Fahrenheit or less, these pears will ripen properly when purchased by a consumer. To further assist the ripening process and result in a higher quality pear, Anjou pears should also have an average pressure of 14 pounds or less prior to shipment. Anjou pears that have been properly chilled will naturally ripen, and soften, over time. The storage and handling practices of a few handlers have allowed Anjou pears to be marketed at much higher pressure levels, sometimes well over 20 pounds, as well as without adequate chilling. In such cases, the consumer finds it is virtually impossible to ripen these pears after purchasing them. This has caused consumer dissatisfaction, hurt repeat purchases, depressed the market for later market pears and resulted in decreased producer returns.

The Committee does not anticipate the establishment of these quality requirements will prevent any producer from ultimately being able to have his fruit marketed. The requirements will simply ensure the proper handling practices that are necessary to prevent poor quality fruit from being shipped early in the marketing year. The

Committee further anticipates that these requirements will be relatively easy for each handler to meet. Winter pears are marketed throughout the year. Therefore, all handlers either have cold storage facilities or have access to such facilities.

In the same motion recommending quality requirements, the Committee also recommended the establishment of a minimum quantity exemption under which shipments of 8,800 pounds or less on any one conveyance may be shipped without regard to the inspection and quality requirements. This minimum quantity exemption will eliminate any adverse impacts on handlers making small shipments or on sales at roadside stands and farmer markets.

The Committee recommended that this rule be effective by August 15 because shipments of Anjou pears are expected to begin shortly thereafter. This rule will apply only through November 1 of each year. Anjou pears harvested in August and stored in cold storage facilities through November 1 will naturally drop to the proposed minimum temperature because the pears are stored at that temperature, or lower. It is also unusual for pressure to be a problem in pears shipped after this date because pears soften naturally. Therefore, after November 1, enforcement of this regulation will no longer be necessary. Similarly the Committee recommended exemption of shipments to areas other than North America since Anjou pears shipped to overseas ports are refrigerated during transit and most shipments are sold and arrive at foreign ports after November 1. Consistent with the experience of many years with the voluntary program, the Committee's intent is to keep regulations at the minimum level necessary to ensure that a quality product is shipped to the consumer and to maintain reasonable returns to producers.

The Committee estimates the total 2000–2001 winter pear shipments at approximately 15,300,000 standard boxes. Of that amount, Anjou pear shipments are estimated at approximately 11,800,000 standard boxes. Last year, the total winter pear crop was about 13,800,000 standard boxes. Of that amount, Anjou pear shipments were approximately 10,100,000 standard boxes. In recent years approximately 7–8 percent of the total Anjou pear crop has been shipped from August 15 through November 1 into the domestic market.

To facilitate communications between the Committee and growers, handlers, and other interested persons, this final

rule also updates § 927.105 to include the Committee's current address.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

There are approximately 90 handlers of winter pears who are subject to regulation under the marketing order and approximately 1,800 winter pear producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000.

The Committee estimates, based upon handler shipment totals and an average price of \$14 per standard box, that about 87 percent of winter pear handlers could be considered small businesses under SBA's definition, excluding receipts from other sources. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistic Service, and the total number of winter pear producers, the average annual producer receipts are approximately \$43,200, excluding receipts from other sources. In view of the foregoing, it can be concluded that the majority of handlers and producers of winter pears may be classified as small entities.

This rule will require that Anjou pears shipped to North America (Continental United States, Mexico, or Canada) during the period of August 15 through November 1 of each year, be certified by the Federal-State Inspection Service as having their core/pulp temperature lowered to 35 degrees Fahrenheit or less and having an average pressure test of 14 pounds or less. Shipments to other markets outside of North America are transported in cold storage containers and the fruit arrives after November 1. This rule will also establish a minimum quantity exemption under which Anjou pear shipments of 8,800 pounds or less on any one conveyance may be shipped

without regard to the inspection and quality requirements.

At its meeting on March 30, and further discussed at subsequent meetings on May 4 and June 2, 2000, the Committee recommended the establishment of quality and inspection requirements for the Anjou variety of pears for shipments to North America from August 15 through November 1 of each year. The Committee recommended, with 83 percent (373 votes) in favor, that it be required that such pears have their core/pulp temperature lowered to 35 degrees Fahrenheit or less and have an average pressure test of 14 pounds or less. The Committee, for over 20 years, has recommended that handlers of Anjou pears voluntarily comply with these two quality factors necessary to enhance the ripening process. In addition, the Committee has regularly provided handlers with a compilation of research data that has been collected over the years supporting the importance of proper chilling for Anjou pears and the fruit being harvested and shipped at appropriate hardness.

While the voluntary program has worked well for many years, an increasing number of handlers in recent years have not consistently complied with these voluntary recommendations. At these three meetings, all Committee members supported the need for Anjou pears to meet these quality requirements prior to shipment. The three members who voted against the establishment of quality regulations supported continuation of the voluntary program.

Anjou pears are unique to most other pear varieties because they are harvested in a mature, but unripe condition. For Anjou pears to ripen properly, these pears should be stored in cold storage facilities until their core/pulp temperature is reduced to 35 degrees Fahrenheit or less. Once the core/pulp temperature is reduced to 35 degrees Fahrenheit or less, these pears will ripen properly when purchased by a consumer. To further assist the ripening process and result in a higher quality pear, Anjou pears should have an average pressure test of 14 pounds or less prior to shipment. Anjou pears that have been properly chilled will naturally ripen, and soften, over time. The storage and handling practices of a few handlers have allowed Anjou pears to be marketed at much higher pressure levels, sometimes well over 20 pounds, as well as without adequate chilling. In such cases, the consumer finds that it is virtually impossible to ripen these pears after purchasing them. This has caused consumer dissatisfaction, hurt repeat purchases, depressed the market for

later market pears and resulted in decreased producer returns.

The Committee does not anticipate the establishment of these quality requirements will prevent any producer from ultimately being able to have his fruit marketed. The requirements will simply ensure that handlers follow the handling practices necessary to prevent poor quality fruit from being shipped early in the marketing year. The Committee further anticipates that these requirements will be relatively easy for each handler to meet. Winter pears are marketed throughout the year. Therefore, all handlers either have cold storage facilities or have access to such facilities.

In the same motion recommending quality requirements, the Committee also recommended the establishment of a minimum quantity exemption under which shipments of 8,800 pounds or less on any one conveyance may be shipped without regard to the inspection and quality requirements. This minimum quantity exemption will eliminate any adverse impacts on handlers making small shipments or on sales at roadside stands and farmer markets.

The Committee recommended that this rule be effective by August 15 because shipments of Anjou pears are expected to begin shortly thereafter. This rule will apply only through November 1 of each year. Anjou pears harvested in August and stored in cold storage facilities through November 1 will naturally drop to the minimum temperature because they are stored at that temperature, or lower. It is also unusual for pressure to be a problem in pears shipped after this date because pears soften naturally. Therefore, after November 1, enforcement of this regulation will no longer be necessary. Similarly the Committee recommended exemption of shipments to areas other than North America since Anjou pears shipped to overseas ports are refrigerated during transit and most shipments are sold and arrive at foreign ports after November 1. Consistent with the experience of many years with the voluntary program, the Committee's intent is to keep regulations at the minimum level necessary to ensure a quality product is shipped to the consumer and to maintain reasonable returns to producers.

This rule will impose some additional costs on handlers. Some of the additional costs may be passed on to producers. In recent years, approximately 9–10 percent of the total Anjou pear crop has been shipped from August 15 through November 1 into North American markets. The

Committee currently estimates the Anjou pear crop to be approximately 11,800,000 standard boxes. An average inspection rate for pears within the production area will approximate \$0.05 per standard box. Therefore, it is estimated that the establishment of quality and inspection requirements will result in mandatory inspection costs of approximately \$56,050 (9.5 percent \times 11,800,000 standard boxes \times inspection rate of \$0.05 per standard box). The actual increase in costs to the industry because of mandatory inspection requirements will be significantly less, however, because approximately 65–75 percent of the Anjou pear crop is currently being inspected on a voluntary basis. These costs are expected to be significantly offset by the benefits of this final rule. The benefits for this final rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

The Committee discussed alternatives to the quality requirements, including a longer time period of mandatory inspection as well as continuing with the voluntary program. The Committee believes that the requirements in this final rule are the minimum level necessary to ensure a quality product. The Committee believes that voluntary compliance is no longer effective. The Committee believes that this action will benefit producers, handlers, and consumers.

This final rule will not impose any additional reporting or recordkeeping requirements on either small or large winter pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

In addition, the Committee's meetings were widely publicized throughout the winter pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the March 30, May 4, and June 2, 2000, meetings were public meetings and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on July 3, 2000 (65 FR 41018). Copies of the rule were mailed or sent via facsimile to Committee members. Finally, the rule was made available

through the Internet by the Office of the Federal Register. A 15-day comment period ending July 18, 2000, was provided to allow interested persons to respond to the proposal. No comments were received.

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

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

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) This rule needs to be in place by August 15, 2000, because shipments of Anjou pears from the 2000 crop are expected to begin shortly thereafter; (2) handlers are aware of this rule, which was discussed and recommended at several public meetings, and are prepared to operate under the quality and inspection requirements established herein; and (3) a 15-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 927.105 is revised to read as follows:

§ 927.105 Communications.

Unless otherwise prescribed in this subpart, or in the marketing agreement and order, or required by the Control Committee, all reports, applications, submittals, requests, inspection certificates, and communications in connection with the marketing agreement and order shall be forwarded to: Winter Pear Control Committee, 4382

SE International Way, Suite A, Milwaukie OR 97222–4635.

3. A new § 927.316 is added to read as follows:

§ 927.316 Handling regulation.

During the period August 15 through November 1, no person shall handle any Beurre D'Anjou variety of pears for shipments to North America (Continental United States, Mexico, or Canada), unless such pears meet the following requirements:

(a) Beurre D'Anjou variety of pears shall have a certification by the Federal-State Inspection Service, issued prior to shipment, showing that (1) the core/pulp temperature of such pears has been lowered to 35 degrees Fahrenheit or less and (2) any such pears have an average pressure test of 14 pounds. The handler shall submit, or cause to be submitted, a copy of the certificate issued on the shipment to the Control Committee.

(b) Each handler may ship on any one conveyance 8,800 pounds or less of Beurre D'Anjou variety of pears without regard to the quality and inspection requirements in paragraph (a) of this section.

Dated: August 1, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–19875 Filed 8–4–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV00–930–3 FR]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Decreased Assessment Rates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule decreases the assessment rate for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from \$0.00225 to \$0.0017 per pound. This rule also decreases the assessment rate for cherries utilized for juice, juice concentrate, or puree from \$0.001125 to \$0.00085 per pound. Both assessment rates are established for the Cherry Industry Administrative Board (Board) under Marketing Order No. 930 for the 2000–2001 and subsequent fiscal

periods. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in the production area. Authorization to assess tart cherry handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: August 8, 2000.

FOR FURTHER INFORMATION CONTACT:

Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, Maryland 20737 telephone: (301) 734–5243; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930, both as amended (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the “order.” The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, tart cherry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable tart cherries beginning July 1, 2000, and continue until amended, suspended, or

terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Board for the 2000–2001 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from \$0.00225 to \$0.0017 per pound of cherries. The assessment rate for cherries utilized for juice, juice concentrate, or puree is decreased from \$0.001125 to \$0.00085 per pound.

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

For the 1999–2000 fiscal period, the Board recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board met on March 2, 2000, and unanimously recommended 2000–2001 expenditures of \$455,000 and an

assessment rate of \$0.0017 per pound for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree and an assessment rate of \$0.00085 per pound of cherries utilized for juice, juice concentrate, or puree. In comparison, last year's budgeted expenditures were \$497,780. Decreased assessment rates were recommended by the Board because the 2000 crop is expected to be large. In addition, the Board wants to reduce handler costs and keep its monetary reserve within the authorized maximum of approximately one year's operational expenses specified in § 930.42(a) of the order. The decreased assessment rates together with funds from the Board's operating reserve and interest income are expected to generate enough income to meet the Board's reduced operating expenses in 2000–2001.

The major expenditures recommended by the Board for the 2000–2001 fiscal period include \$175,000 for personnel, \$120,000 for compliance, and \$75,000 for Board meetings. Budgeted expenses for these items in 1999–2000 were \$222,780 for personnel, \$100,000 for Board meetings, and \$100,000 for compliance.

The order provides that when an assessment rate based on the number of pounds of tart cherries handled is established, it should provide for differences in relative market values for various cherry products. The discussion of this provision in the order's promulgation record indicates that proponents testified that cherries utilized in high value products such as frozen, canned, or dried cherries should be assessed one rate while cherries used to make low value products such as juice concentrate or puree should be assessed at one-half that rate.

Data from the National Agricultural Statistics Service (NASS) states that for 1998, tart cherry utilization for juice, wine, or brined uses was 28.3 million pounds for all districts covered under the order. The total processed amount for 1998 was 303.8 million pounds. Juice, wine, and brined tart cherries represented less than 10 percent of the total processed crop, and about 8 percent over the last three seasons (1996 through 1998).

In deriving the recommended the assessment rates, the Board estimated assessable tart cherry production for the 2000–2001 crop year at 260 million pounds. It further estimated that about 245 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 15 million pounds would be

utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be approximately \$416,500 (245 million pounds × \$0.0017 per pound). The potential income from tart cherries utilized for juice, juice concentrate, or puree would be \$12,750 (15 million pounds × \$0.00085 per pound). Therefore, the total assessment income for 2000–2001 is estimated at \$429,250. This amount plus adequate supplies in the reserve and interest income will be sufficient to cover budgeted expenses. Funds in the reserve (currently \$300,000) will be kept within the approximately one year's operational expenses permitted by the order (7 CFR 930.42(a)).

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

Although the assessment rates are effective for an indefinite period, the Board will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modification of the assessment rates are needed. Further rulemaking will be undertaken as necessary. The Board's 2000–2001 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this final regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) would allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts

the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

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

There are approximately 900 producers of tart cherries in the production area and approximately 40 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of tart cherry producers and handlers may be classified as small entities.

This rule decreases the assessment rate established for the Board and collected from handlers for the 2000–2001 and subsequent fiscal periods cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from \$0.00225 to \$0.0017 per pound, and the assessment rate for cherries utilized for juice, juice concentrate, or puree from \$0.001125 to \$0.00085 per pound. The Board unanimously recommended 2000–2001 expenditures of \$455,000 and the reduced assessment rates. The quantity of assessable tart cherries for the 2000–2001 crop year is estimated at 260 million pounds. Assessment income, based on this crop, along with interest income and reserves will be adequate to cover budgeted expenses.

The major expenditures recommended by the Board for the 2000–2001 fiscal period include \$175,000 for personnel, \$120,000 for compliance, and \$75,000 for Board meetings. Budgeted expenses for these items in 1999–2000 were \$222,780 for personnel, \$100,000 for compliance, and \$100,000 for Board meetings.

Decreased assessment rates were recommended by the Board this year because the Board expects the 2000 crop to be large. In addition, the Board wants to reduce handler costs and wants to keep its monetary reserve within the authorized maximum of approximately

one year's operational expenses as specified in § 930.42(a).

The Board discussed the alternative of continuing the existing assessment rates, but concluded that the Board should operate as efficiently as possible and the amount collected at the higher rates could cause the operating reserve to exceed what is actually needed. In deriving the recommended assessment rates, the Board estimated assessable tart cherry production for the crop year at 260 million pounds. It further estimated that about 245 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 15 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be approximately \$416,500 (245 million pounds × \$0.0017 per pound). The potential income from tart cherries utilized for juice, juice concentrate, or puree would be \$12,750 (15 million pounds × \$0.00085 per pound). Therefore, the total assessment income for 2000–2001 is estimated at \$429,250. This amount plus adequate supplies in the reserve and interest income will be sufficient to cover budgeted expenses. Funds in the reserve (currently \$300,000) will be kept within the approximately one year's operational expenses permitted by the order (7 CFR 930.42(a)).

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the March 2, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and

duplication by industry and public sector agencies.

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

A proposed rule concerning this action was published in the **Federal Register** on May 22, 2000. Copies of the rule were mailed by the Board's staff to all Board members and cherry handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided a 30-day comment period which ended June 21, 2000. No comments were received.

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

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

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the fiscal period began July 1, 2000, and the assessment rates apply to all cherries received during the 2000–2001 and subsequent fiscal periods. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 30–day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 930.200 is revised to read as follows:

§ 930.200 Handler assessment rates.

On and after July 1, 2000, the assessment rate imposed on handlers shall be \$0.0017 per pound of cherries handled for tart cherries grown in the production area and utilized in the production of tart cherry products other than juice, juice concentrate, or puree. The assessment rate for juice, juice concentrate, and puree products shall be \$0.00085 per pound.

Dated: August 1, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00-19873 Filed 8-4-00; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 945**

[Docket No. FV00-945-1 FIR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Modification of Handling Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, with change, the provisions of an interim final rule relaxing pack requirements to allow handlers to ship U.S. No. 2 grade potatoes in one-piece 50-pound cartons to better meet buyer needs. Prior to this action, only U.S. No. 1 and better grade potatoes could be shipped in cartons. This change was recommended by the Idaho-Eastern Oregon Potato Committee (Committee), the agency responsible for local administration of the marketing order. This rule continues in effect relaxed pack requirements which allow handlers to ship a substantial amount of U.S. No. 2 grade potatoes in cartons, thus meeting customer demand and maximizing producer returns.

EFFECTIVE DATE: August 8, 2000.

FOR FURTHER INFORMATION CONTACT: Dennis L. West, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room

2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 98 and Marketing Order No. 945, both as amended (7 CFR part 945), regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Sections 945.51 and 945.52 of the order provide authority for the establishment and modification of regulations applicable to the handling of potatoes. Section 945.341 establishes minimum maturity and pack requirements for potatoes handled subject to the Idaho-Eastern Oregon potato marketing order. Prior to this

action, pack requirements specified that all potatoes packed in cartons were to be inspected and certified as meeting U.S. No. 1 grade or better, and that potato size be conspicuously marked on all cartons (except when used as a master container). Grade and size requirements in the order are based on the U.S. Standards for Grades of Potatoes (7 CFR 51.1540-51.1566), and the size must be marked consistent with § 51.1545 of the standards. Also, all varieties shall meet the maturity requirement of slightly skinned (except the Norgold variety from August 1-15, and the White Rose and red skinned varieties from August 1-December 31 can be moderately skinned). During other periods of the year, the White Rose and red skinned varieties are not subject to maturity requirements.

This rule continues in effect pack requirements which allow handlers to ship U.S. No. 2 grade potatoes in one-piece 50-pound fiberboard cartons of natural kraft color provided each carton is permanently and conspicuously marked as to grade. This change allows handlers to ship a substantial amount of U.S. No. 2 potatoes in cartons, thus meeting customer demands and maximizing producer returns.

The Committee met on January 18, 2000, and again by telephone on February 3, 2000, and unanimously recommended the relaxation of pack requirements to allow handlers to ship U.S. No. 2 or better grade potatoes in one-piece 50-pound fiberboard cartons of natural kraft color provided the cartons are permanently and conspicuously marked as to grade.

To meet the needs of the food service industry, the Committee recommended the relaxation of pack requirements to allow handlers to ship U.S. No. 2 grade potatoes in one-piece 50-pound fiberboard cartons of natural kraft color that are permanently and conspicuously marked as to grade. Currently, potatoes packed in cartons are required to grade at least U.S. No. 1. At its meeting on January 18, 2000, the unanimous consensus of the Committee was that pack requirements should be relaxed. The Committee subsequently conducted a telephone vote on February 3, 2000, and unanimously passed a motion to relax the pack requirements.

Customers have been requesting U.S. No. 2 grade potatoes in 50-pound cartons because of difficulties encountered in handling the currently used 50-pound burlap or paper bags. The burlap bags are messy, difficult to handle, and do not stack well on pallets. The paper bags often tear and are equally difficult to handle or stack. Warehouses that use electronic bar

codes have reported less administration and recordkeeping problems with cartons than bags because the codes are more legible on cartons.

Many customers purchase potatoes from other areas where U.S. No. 2 potatoes are packed in 50-pound cartons. The Committee is responding to these changing market conditions so that handlers will remain competitive with the other areas and not lose sales.

The Committee also recognized the need to distinguish these U.S. No. 2 grade potatoes in cartons from the industry's traditional premium U.S. No. 1 grade pack in cartons. Without such a distinction, buyers might become confused and the U.S. No. 2 grade potatoes in cartons might have a price depressing effect on the premium U.S. No. 1 grade pack in cartons. The Committee was also concerned that buyers not have the opportunity to re-lid cartons with misleading or erroneous information on the pack and grade of the potatoes. Therefore the Committee included in their recommendation that fiberboard cartons be of one-piece construction, of a natural kraft color, and permanently and conspicuously marked to grade.

In addition to finalizing the interim final rule published at 65 FR 25625, this final rule also corrects an error in that interim final rule that removed the maturity requirement for Norgold variety potatoes. This rule restores that maturity requirement as was in effect in § 945.341(b)(2) prior to the changes made in 65 FR 25625, and restores the paragraphs that were redesignated as paragraphs (b)(2) and (b)(3) in the interim final rule, as paragraphs (b)(3) and (b)(4), respectively. That is, the Norgold variety shall meet the maturity requirement of slightly skinned (except from August 1–15 this variety can be moderately skinned).

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

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

There are approximately 63 handlers of Idaho-Eastern Oregon potatoes who

are subject to regulation under the marketing order and about 1,600 potato producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000. A majority of these handlers and producers may be classified as small entities, excluding receipts from other sources.

This rule continues to relax the order's pack requirements to allow handlers to ship U.S. No. 2 grade potatoes in one-piece 50-pound fiberboard cartons of natural kraft color, provided the cartons are permanently and conspicuously marked as to grade. This change enables handlers to ship a substantial amount of U.S. No. 2 potatoes in cartons, thus meeting customer demands and maximizing producer returns. Prior to this action, the order required that all potatoes packed in cartons be inspected and certified to meeting U.S. No. 1 or better grade. At its meeting on January 18, 2000, it was the Committee's unanimous consensus that pack requirements should be relaxed. The Committee subsequently conducted a telephone vote on February 3, 2000, and unanimously passed the pack relaxation motion.

Customers have been requesting U.S. No. 2 grade potatoes in 50-pound cartons because of difficulties experienced in handling 50-pound burlap or paper bags. The burlap bags are messy, difficult to handle, and do not stack well on pallets. The paper bags often tear and are equally difficult to handle or stack. Warehouses that use electronic bar codes have reported less administration and recordkeeping problems with cartons than bags because the codes are more legible on cartons.

Many customers purchase potatoes from other areas where U.S. No. 2 potatoes are packed in 50-pound cartons. In recommending this change, the Committee is responding to changing market conditions so that handlers will remain competitive with other areas and not lose sales.

The Committee also recognized the need to distinguish U.S. No. 2 grade potatoes packed in cartons from the traditional premium U.S. No. 1 grade pack in cartons. Without such a distinction, buyers might become confused and the U.S. No. 2 grade potatoes in cartons might have a price depressing effect on the premium U.S. No. 1 grade pack in cartons. The Committee was also concerned that

buyers not have the opportunity to re-lid cartons with misleading or erroneous information on the pack and grade of the potatoes. Therefore, the Committee included in its recommendation the provision that the fiberboard cartons be of one-piece construction, of a natural kraft color, and permanently and conspicuously marked as to grade.

During the meetings, the Committee discussed the impact one-piece 50-pound cartons of U.S. No. 2 potatoes might have on the industry. The Committee believes that the recommendation will increase the sale of U.S. No. 2 grade potatoes to the food service industry. Information from the Committee indicates that during an average season, approximately 10 percent of the fresh potato shipments from the production area are of U.S. No. 2 grade, and that approximately 20 percent of the potatoes going to the food service industry are of U.S. No. 2 grade. This action is expected to further increase shipments to the food service industry, and help the Idaho-Eastern Oregon potato industry benefit from the increased growth in the food service industry.

The relaxation of pack requirements allowing handlers to ship U.S. No. 2 grade potatoes in cartons might require the purchase of new equipment that can handle one-piece cartons. However, these costs are expected to be minimal and would be offset by the benefits of being able to ship U.S. No. 2 grade potatoes in that manner. The benefits of this rule are not expected to be disproportionately greater or lesser for small entities than large entities.

As alternatives to this action, the Committee considered various methods to distinguish cartons of U.S. No. 2 grade potatoes from the traditional premium carton pack of U.S. No. 1 grade potatoes. The Committee decided that it was important that there be a clear distinction between the packs to ensure that the shipments of U.S. No. 2 potatoes in cartons not negatively impact the market for U.S. No. 1 potatoes in cartons.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large potato handlers and importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's January 18, 2000, meeting was widely publicized throughout the potato industry, and all interested persons were invited to attend and participate in Committee deliberations. Like all Committee meetings, this was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on May 3, 2000. A copy of the rule was faxed and mailed to the Committee's staff, which in turn, made the rule available to Committee members and potato handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended July 3, 2000. No comments were received.

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

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, with change, as published in the **Federal Register** (65 FR 25625, May 3, 2000) will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action corrects maturity requirements for Norgold variety potatoes which were inadvertently removed; (2) no useful purpose would be achieved by delaying the effective date of this action; and (3) no comments were received in response to the interim final rule.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

Accordingly, the interim final rule amending 7 CFR part 945 which was published at 65 FR 25625 on May 3, 2000, is adopted as a final rule with the following change:

1. The authority citation for part 945 continues to read as follows:

Authority: 7 U.S.C. 601–674

2. In § 945.341, paragraphs (b)(2) and (b)(3) are redesignated as paragraphs (b)(3) and (b)(4) and a new paragraph (b)(2) is added to read as follows:

§ 945.341 Handling regulation.

* * * * *

(b) * * *

(2) *Norgold varieties*. Each year from August 1 through August 15, “moderately skinned”; during other periods “slightly skinned.”

* * * * *

Dated: August 1, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–19874 Filed 8–4–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–88–AD; Amendment 39–11748; AD 2000–10–23]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –200, –300, 747SR, and 747SP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD) that applies to certain Boeing Model 747–100, –200, –300, 747SR, and 747SP series airplanes. That AD currently requires repetitive inspections to detect cracking of the longeron splice fittings at stringer 11, on the left and right sides at body station 2598, and replacement of any cracked fitting with a new fitting. This document clarifies the applicable compliance time for certain airplanes. This correction is necessary to ensure that fatigue cracking on longeron splice fittings, which could result in reduced controllability of the horizontal stabilizer, is detected and corrected in a timely manner.

DATES: Effective June 30, 2000.

The incorporation by reference of Boeing Service Bulletin 747–53A2410, Revision 3, including Addendum, dated March 12, 1998, as listed in the regulations, was approved previously by the Director of the Federal Register as of

June 30, 2000 (65 FR 34061, May 26, 2000).

The incorporation by reference of Boeing Alert Service Bulletin 747–53A2410, Revision 2, including Addendum, dated October 30, 1997, as listed in the regulations, was approved previously by the Director of the **Federal Register** as of January 13, 1998 (62 FR 67550, December 29, 1997).

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On May 18, 2000, the Federal Aviation Administration (FAA) issued AD 2000–10–23, amendment 39–11748 (65 FR 34061, May 26, 2000), which applies to certain Boeing Model 747–100, –200, –300, 747SR, and 747SP series airplanes. That AD requires repetitive inspections to detect cracking of the longeron splice fittings at stringer 11, on the left and right sides at body station 2598, and replacement of any cracked fitting with a new fitting. That AD was prompted by reports that fatigue cracking was found on longeron splice fittings. The actions required by that AD are intended to detect and correct such fatigue cracking, which could result in reduced controllability of the horizontal stabilizer.

Need for the Correction

Since the issuance of AD 2000–10–23, the manufacturer has informed the FAA that the correct compliance time for certain airplanes is unclear. Paragraph (a)(1) of the AD states the applicable compliance time, “For airplanes that have accumulated fewer than 17,000 total flight cycles or 63,000 total flight hours as of the effective date of this AD.” Paragraph (a)(2) of the AD states the applicable compliance time, “For airplanes that have accumulated 17,000 total flight cycles or more, or 63,000 total flight hours or more, as of the effective date of this AD.” The manufacturer points out that the use of the word “or” (“* * * fewer than 17,000 total flight cycles or 63,000 total flight hours * * *”) in paragraph (a)(1) makes it possible that some airplanes may inadvertently be subject to the compliance times in both paragraphs (a)(1) and (a)(2).

The FAA has reviewed this wording and determined that a correction to AD 2000–10–23 is necessary. The FAA's intent is that the compliance times in paragraph (a)(1) apply to airplanes with

relatively fewer flight cycles. That is, as of the effective date of this AD, if an airplane's total number of flight cycles is less than 17,000, and the same airplane's total number of flight hours is less than 63,000, then the compliance times in paragraph (a)(1) apply. Therefore, this correction will revise paragraph (a)(1) to state that the compliance time in that paragraph applies to "airplanes that have accumulated fewer than 17,000 total flight cycles and 63,000 total flight hours as of the effective date of this AD."

Correction of Publication

This document corrects the error and correctly adds the AD as an amendment to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains June 30, 2000.

Since this action only corrects and clarifies a current requirement, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Correction

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Corrected]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

2000-10-23 Boeing: Amendment 39-11748. Docket 97-NM-88-AD.

Applicability: Model 747-100, 747-200, 747-300, 747SR, and 747SP series airplanes; having line positions 201 through 886 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the

requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the longeron splice fittings at stringer 11, which could result in reduced controllability of the horizontal stabilizer, accomplish the following:

Initial Inspection

(a) Perform a one-time detailed visual inspection to detect cracking of the longeron fittings at stringer 11, on the left and right sides at body station 2598, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747-53A2410, Revision 2, dated October 30, 1997, including Addendum; or Boeing Service Bulletin 747-53A2410, Revision 3, dated March 12, 1998, including Addendum. After the effective date of this AD, only Revision 3 shall be used.

(1) For airplanes that have accumulated fewer than 17,000 total flight cycles and 63,000 total flight hours as of the effective date of this AD: Inspect at the later of the times specified in paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Prior to the accumulation of 17,000 total flight cycles or 63,000 total flight hours, whichever occurs first.

(ii) Within 1,800 flight cycles or 7,000 flight hours after the effective date of this AD, whichever occurs first.

(2) For airplanes that have accumulated 17,000 total flight cycles or more, or 63,000 total flight hours or more, as of the effective date of this AD: Inspect at the earlier of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Prior to the accumulation of 22,000 total flight cycles or 78,000 total flight hours, whichever occurs first.

(ii) Within 1,800 flight cycles or 7,000 flight hours after the effective date of this AD, whichever occurs first.

Note 2: Where there are differences between the AD and the service bulletin, the AD prevails.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Repetitive Inspections

(b) If no crack is found during the inspection required by paragraph (a) of this

AD, repeat the inspection one time at the later of the times specified in paragraphs (b)(1) and (b)(2) of this AD, and thereafter at intervals not to exceed 3,000 flight cycles or 18,000 flight hours, whichever occurs first.

(1) Within 3,000 flight cycles or 18,000 flight hours after accomplishment of the most recent inspection, whichever occurs first.

(2) Within 1,800 flight cycles or 7,000 flight hours after the effective date of this AD, whichever occurs first.

Replacement and Repetitive Inspections

(c) If any crack is found during any inspection required by paragraph (a) or (b) of this AD: Prior to further flight, replace the cracked fitting with a new fitting, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747-53A2410, Revision 2, dated October 30, 1997, including Addendum; or Boeing Service Bulletin 747-53A2410, Revision 3, dated March 12, 1998, including Addendum. After the effective date of this AD, only Revision 3 shall be used. Then, repeat the inspection specified in paragraph (a) of this AD at the later of the times specified in paragraphs (c)(1) and (c)(2) of this AD, and thereafter at intervals not to exceed 3,000 flight cycles or 18,000 flight hours, whichever occurs first.

(1) Within 17,000 flight cycles or 63,000 flight hours after replacement, whichever occurs first.

(2) Within 1,800 flight cycles or 7,000 flight hours after the effective date of this AD, whichever occurs first.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(f) The actions shall be done in accordance with Boeing Alert Service Bulletin 747-53A2410, Revision 2, including Addendum, dated October 30, 1997; or Boeing Service Bulletin 747-53A2410, Revision 3, including Addendum, dated March 12, 1998.

(1) The incorporation by reference of Boeing Service Bulletin 747-53A2410, Revision 3, including Addendum, dated March 12, 1998, was approved previously by the Director of the Federal Register as of June 30, 2000 (65 FR 34061, May 26, 2000).

(2) The incorporation by reference of Boeing Alert Service Bulletin 747-53A2410,

Revision 2, including Addendum, dated October 30, 1997, was approved previously by the Director of the Federal Register as of January 13, 1998 (62 FR 67550, December 29 1997).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) The effective date of this amendment remains June 30, 2000.

Issued in Renton, Washington, on July 28, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 00-19670 Filed 8-4-00; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00-ASO-24]

Establishment of Class D Airspace; Oak Grove, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Oak Grove, NC. The United States Marine Corps operates a part time control tower at the Marine Corps Outlying Landing Facility (MCOFL) Airport. Class D surface area airspace is required when the control tower is open to accommodate instrument approaches and for Instrument Flight Rules (IFR) operations at the airport. Therefore, the United States Marine Corps has requested the establishment of Class D airspace at this airport. This action establishes Class D airspace extending upward from the surface to and including 1,500 feet mean sea level (MSL) within a 4-mile radius of the MCOFL Airport.

EFFECTIVE DATE: 0901 UTC, October 5, 2000.

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

SUPPLEMENTARY INFORMATION:

History

On June 23, 2000, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D airspace at Oak Grove, NC (65 FR 39111). Designations for Class D airspace extending upward from the surface of the earth are published in paragraph 5000 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR part 71.1. The Class D designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace at Oak Grove, NC.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

ASO NC D Oak Grove, NC [New]

Marine Corps Outlying Landing Facility Airport, NC

(lat. 35°02'01" N, long. 77°14'59" W)

That airspace extending upward from the surface to and including 1,500 feet MSL within a 4-mile radius of Marine Corps Outlying Landing Facility Airport. This Class D airspace area is effective on a random basis. The effective days and times are continuously available from Cherry Point Approach Control.

* * * * *

Issued in College Park, Georgia, on July 27, 2000.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00-19853 Filed 8-4-00; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00-ASO-22]

Establishment of Class D Airspace; Boca Raton, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Boca Raton, FL. Air traffic controllers at Boca Raton Airport, FL, will be certificated weather observers by October 5, 2000. Therefore, the airport will meet criteria for Class D airspace on October 5, 2000. Class D surface area airspace is required when the control tower is open to accommodate current Standard Instrument Approach Procedures (SIAPs) and for Instrument Flight Rules (IFR) operations at the airport. This action establishes Class D airspace extending upward from the surface to and including 2,500 feet mean sea level (MSL) within a 4.1-mile radius of the Boca Raton Airport.

EFFECTIVE DATE: 0901 UTC, October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace

Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5586.

SUPPLEMENTARY INFORMATION:

History

On June 20, 2000, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D airspace at Boca Raton, FL (65 FR 38225). Designations for Class D airspace extending upward from the surface of the earth are published in paragraph 5000 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR part 71.1. The Class D designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace at Boca Raton Airport.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

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

<i>Paragraph 5000</i>	<i>Class D Airspace</i>
* * *	* * *

ASO FL D Boca Raton, FL [New]

Boca Raton Airport, FL
(Lat. 26°22'43" N, long. 80°06'28" W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.1-mile radius of Boca Raton Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on July 27, 2000.

Wade T. Carpenter,

*Acting Manager, Air Traffic Division,
Southern Region.*

[FR Doc. 00-19852 Filed 8-4-00; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-ASO-12]

RIN 2120-AA66

Realignment of Jet Route J-151

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the legal description of Jet Route J-151 by realigning a segment of the route between the Farmington, MO, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and the Vulcan, AL, VORTAC. Specifically, this action realigns J-151 to form a direct route between the Vulcan and Farmington VORTACs. The FAA is

taking this action because the current route segment between the Farmington VORTAC and the Candu navigational fix is unusable for navigation due to frequency interference.

EFFECTIVE DATE: 0901 UTC, October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA-400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

History

On March 23, 2000, the FAA proposed to amend 14 CFR part 71 to realign a segment of J-151 that is unusable for navigation (65 FR 15586). Flight inspection revealed that the segment between the Farmington, MO, VORTAC, and the Candu navigational fix is affected by co-channel radio interference from another navigational aid that uses the same frequency. This problem renders the affected segment unusable for navigation purposes.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments. No comments to the proposal were received. Except for editorial changes, this rule is the same as that proposed in the notice.

The Rule

This action amends 14 CFR part 71 by realigning a segment of J-151. Currently, the segment of J-151 between the Farmington VORTAC and the Candu navigational fix has been found to be unusable for navigation due to frequency interference. The FAA has issued Flight Data Center Notices to Airmen advising users of this problem. To correct this problem, it is necessary to realign J-151 between the Farmington VORTAC and the Vulcan VORTAC as a direct route.

Jet routes are published in paragraph 2004 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR section 71.1. The jet route listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

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

Paragraph 2004—Jet Routes

* * * * *

J-151 [Revised]

From Cross City, FL; Vulcan, AL; Farmington, MO; St Louis, MO; Des Moines, IA; O’Neill, NE; Rapid City, SD; Billings, MT; INT Billings 266° and Whitehall, MT, 103° radials; to Whitehall.

* * * * *

Issued in Washington, DC, on July 28, 2000.

Paul Gallant,

Acting Manager, Airspace and Rules Division.
[FR Doc. 00–19931 Filed 8–4–00; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 423

Exemption Granted Concerning Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods

AGENCY: Federal Trade Commission.

ACTION: Request for exemption granted.

SUMMARY: In a **Federal Register** notice dated April 14, 2000, the Federal Trade Commission (the “Commission”) requested public comment on a proposed exemption to its Trade Regulation Rule on Care labeling of Textile Wearing Apparel and Certain Piece Goods (“the Care Labeling Rule” or “the Rule”). The Esprit de Corp company petitioned the Commission for the proposed exemption, which would permit it to distribute three specific styles of apron camisoles without attaching permanent care labels to the garments, as otherwise required by the Care Labeling Rule. Only one comment, which supports the approval of the proposed exemption, was received.¹ On the basis of the petition, the sample garments submitted by the petitioner, and the comment received, the Commission believes that a permanent label on the garments would impair the appearance and usefulness of the items. In granting the petition, the Commission notes that care instructions for the camisoles still must be given on a hang tag, or on the package, or in some other conspicuous place, so that consumers will be able to see the care information before buying the product.

DATES: The exemption is effective August 7, 2000.

FOR FURTHER INFORMATION CONTACT: Constance M. Vecellio, Attorney, Federal Trade Commission, Washington, DC 20580, (202) 326–2966.

SUPPLEMENTARY INFORMATION: The Rule was promulgated by the Commission on December 16, 1971, 36 FR 23883 (1971), and amended on May 20, 1983, 48 FR 22733 (1983). The Rule makes it an unfair or deceptive act or practice for manufacturers and importers of textile wearing apparel and certain piece goods to sell these items without attaching care labels stating “what regular care is needed for the ordinary use of the product.” (16 CFR 423.6(a) and (b)) The Rule defines a care label as a “permanent label or tag * * * that is attached or affixed in such a manner

that it will not become separated from the product * * *.” (16 CFR 423.1(a))

Section 423.8(b) of the Rule states that manufacturers or importers can ask for an exemption from the requirement of attaching a permanent care label for any textile wearing apparel product or product line if the label would harm the appearance or usefulness of the product. Section 423.8(c) of the Rule states that if an item is exempt from care labeling under subparagraph (b) of section 423.8, the consumers still must be given the required care information for the product, but the care information can be provided on a hang tag, on the package, or in some other conspicuous place, so that consumers will be able to see the care information before buying the product.

List of Subjects in 16 CFR Part 423

Clothing, Labeling, Textiles, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–19899 Filed 8–4–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 125, 225, and 356

[Docket No. RM99–8–000; Order No. 617]

Preservation of Records of Public Utilities and Licensees, Natural Gas Companies, and Oil Pipeline Companies

Issued July 27, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its records retention regulations for public utilities and licensees, natural gas companies, and oil pipeline companies (“regulated companies”). The Commission is updating its regulations and eliminating unnecessary burdens on regulated companies as part of its ongoing program to reduce or eliminate burdensome and unnecessary regulatory requirements.

EFFECTIVE DATE: This final rule is effective January 1, 2001.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission,

¹ Comment dated May 4, 2000, from John B. Pellegrini, of the law firm of Ross & Hardies, on behalf of the United States Association of Importers of Textiles and Apparel (“USA-ITA”).

888 First Street, NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Mary C. Lauermann (Technical Information), Office of Finance, Accounting and Operations, 888 First Street, NE, Washington, DC 20426, (202) 208-0087

Julia A. Lake (Legal Information), Office of the General Counsel, 888 First Street, NE, Washington, DC 20426, (202) 208-2019

SUPPLEMENTARY INFORMATION:

Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hebert, Jr.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending Parts 125, 225, and 356¹ of its regulations to update, reduce, and clarify records retention requirements for jurisdictional public utilities and licensees, natural gas companies and oil pipeline companies. This final rule is part of the Commission's ongoing program to update and eliminate burdensome and unnecessary requirements. These changes will significantly reduce the burden of maintaining records for regulated companies. This process was also initiated to respond to requests made by the Office of Management and Budget (OMB) and the industry.

II. Background

Both the Federal Power Act² and the Natural Gas Act³ require jurisdictional companies to keep records that the Commission may prescribe "as necessary or appropriate for purposes of administration" of these acts.⁴ In 1977, the Commission assumed jurisdiction over transportation of oil by oil pipeline companies from the Interstate Commerce Commission by 705(a) of the Department of Energy Organization Act.⁵ Section 20 of the Interstate Commerce Act⁶ requires oil pipeline companies to keep records that the Commission determines are necessary to effectively regulate those companies. In 1983, the Commission last amended its records retention regulations applicable to the public utilities and licensees,

natural gas companies, and oil pipeline companies.⁷

In response to an Office of Management and Budget (OMB) request during recertification of the information collection requirements of FERC Form 555, Preservation of Records of Public Utilities and Licensees, Natural Gas Companies, and Oil Pipeline Companies, the Commission agreed to review the media and records retention requirements for the public utilities and licensees, natural gas companies, and oil pipeline companies. OMB also requested that the Commission review the possibility of reducing the records retention requirements for general ledgers from 50 years to 10 years and plant ledgers from 50 years to 25 years. In January, the Commission updated the media requirements⁸ and this final rule is the result of a review of the current records retention regulations for public utilities and licensees, natural gas companies, and oil pipeline companies.

On December 21, 1999, the Commission issued a notice of proposed rulemaking (NOPR) in Docket No. RM99-8-000.⁹ The Commission received eight comments on the NOPR representing the electric and gas pipeline industries.¹⁰ No comments were received from oil pipeline companies or licensees.

III. Discussion

The Commission has made modifications to the current public utilities and licensees, natural gas companies, and oil pipeline companies records retention regulations. These changes to parts 125, 225, and 356 include revising the general instructions, shortening various records retention periods, increasing retention periods for a few categories of records, and removing all but one retention reserve item. Therefore, the final order will reduce or eliminate burdensome and unnecessary regulatory requirements for public utilities and licensees, natural gas companies, and oil pipeline companies. All respondents to the NOPR commended the Commission's efforts in reducing retention requirements. However, several respondents felt the Commission had not gone far enough in reducing requirements for accounting records and

ledgers. Specific comments are addressed below.

A. Changes to Public Utilities and Licensees, and Natural Gas Companies General Instructions

The final rule makes the following changes to the general instructions of parts 125 and 225, incorporates the Commission's new regulation on record storage media, and clarifies the Commission's regulations on keeping records used to support costs in rate cases and depreciation.

1. 125.2(d) and 225.2(d)—Incorporate the accounting issuance AI99-2-000¹¹ on record storage media.

2. 125.2(k) and 225.2(k)—Incorporate the need to keep records that will be used for "rate cases" until the next rate case.

3. 125.2(m) and 225.2(m)—Incorporate a paragraph on life or mortality study data needed to be retained for depreciation purposes.

The Commission also made some minor editorial corrections to reflect changes proposed in the NOPR.

The Commission believes that these changes are needed to bring clarity to the Commission's records retention instructions and regulations.

B. Shortening of Public Utilities and Licensees, and Natural Gas Companies Records Retention Periods

The Commission shortened certain retention periods in §§ 125.3 and 225.3 of the Commission's regulations to reduce the record keeping burden on the industries. The records retention periods for the following item numbers and description of records found in the regulations are reduced for both the public utilities and licensees, and natural gas companies except where noted:

Item Number and Description

2. (a) of Organizational documents.
3. (a) of Contracts and agreements (public utilities and licensees only).
3. (b) of Contracts and agreements.
4. (a) and (b) of Accountants' and auditors' reports.
6. (a)(1), (a)(2), (b)(1), and (b)(2) of General and subsidiary ledgers.
7. Journals.
8. (a) of Journal vouchers and journal entries.
9. Cash books.
10. Voucher registers.
11. (a), (b), (c), (d) of Vouchers.
- 12.1. (b) of Production—Nuclear (public utilities and licensees only).
15. (a), (b), (c) of Maintenance work orders.

¹¹ 86 FERC ¶ 61,005 (1999).

¹ 18 CFR parts 125, 225, and 356.

² Section 301, 16 U.S.C. 825(a).

³ Section 8, 15 U.S.C. 717g(a).

⁴ Section 402(a)(2) of the Department of Energy Organization Act transfers these Federal Power Act and Natural Gas Act responsibilities from the Federal Power Commission to the Federal Energy Regulatory Commission. 42 U.S.C. 7172(a)(2).

⁵ 42 U.S.C. 7295.

⁶ 49 App. U.S.C. 1 *et seq.*

⁷ 48 FR 12722 (Mar. 28, 1983).

⁸ 86 FERC ¶ 61,005 (1999).

⁹ 65 FR 1484 (Jan. 10, 2000).

¹⁰ The American Gas Association (AGA), The Association of Records Managers and Administrators—Houston Chapter (ARMA), ANR Pipeline Company and Colorado Interstate Gas Company (ANR & CIG), Edison Electric Institute (EEI), Southern Companies (Southern), The United Illuminating Company (UI), UtiliCorp United, Williston Basin Interstate Pipeline Company.

16. (a), (b) of Plant ledgers.
 17. (a), (b), (c), (d), (e), (f) of Construction work in progress ledgers.
 18. (a), (b) of Retirement work in progress ledgers, work orders, and supplemental records.
 18. (c) of Retirement work in progress ledgers, work orders, and supplemental records (public utilities and licensees only).
 19. Summary sheets, distribution sheets, reports, and statements.
 20. (a) Appraisals and valuations.
 33. (a) and (b) of Revenue summaries.
 34. (a)(1), (3), (5), (6) and (b), (c) of Tax records.
 36. (b) of Records of deposits with banks.
 38. (a) of Statistics.
 41. Reports to Federal and State regulatory commissions.
 42. Advertising.

Industry Comments—Retention of General Ledgers

ANR Pipeline Company and Colorado Interstate Gas Company (ANR & CIG), Edison Electric Institute (EEI), The United Illuminating Company (UI), Southern Companies (Southern), and Association of Records Managers and Administrators—Houston Chapter (ARMA) stated that the retention requirements for general ledgers, journal vouchers, and indexes thereto should be reduced to 10 years, or if the requirement for ledgers (both general and plant) is maintained at 25 years, then the retention requirements for supporting documentation (journal entries, vouchers, etc.) should be reduced to no more than 10 years. Additionally, clarification was requested for retaining general accounting records for 25 years.

Commission Response

The request to further reduce retention requirements to 10 years for general ledgers, journal vouchers and indexes thereto is granted, and the electric and gas schedules have been revised. However, companies must maintain sufficient records to support fully any current, future, or pending rate case (see the revised regulatory text for §§ 125.2(k) and 225.2(k)).

Industry Comments—Electric and Gas Versus Oil

EEI, UI, and Southern requested that record retention requirements in part 125 (and 225) be further reduced to conform to the retention periods in part 356. Additionally, EEI and UI wanted the Commission to provide substantive reasons for longer time periods for utilities and licensees than for oil pipelines for each category of information.

Commission Response

The retention period needs for both electric and gas differ greatly from those of oil due to the nature of the industries, the licensing aspects of hydroelectric projects, the certification process in gas, and the cost based ratemaking in both electric and gas. Additionally, the regulatory/statutory requirements of the electric and gas industries differ greatly from those of the oil industry. As stated in the NOPR, the oil industry retention requirements and the reductions in part 356 are based on a statutory mandate that limits oil pipeline company reparations recovery to 3 years from the time the cause of action accrues. Therefore, retention of records beyond statutorily mandated reparation periods in the oil industry is not necessary. The Commission denies the request.

Industry Comments—Business Purpose

EEI and UI requested the Commission provide a business purpose or regulatory need for periods in excess of 10 years (general ledgers), and substantive reasons for longer time periods for utilities and licensees than for oil pipelines.

Commission Response

The Commission has revised the retention period for general ledgers to 10 years for public utilities and licensees and natural gas pipeline companies, but denies the request to reduce the retention period to bring it in line with the period required for oil pipeline companies. The Commission needs sufficient data available for scrutiny in order to carry out its regulatory mandates. As rate case filings become more infrequent, it is imperative that the Commission, and its staff, have access to supporting rate-case documentation, as well as documentation that might be pertinent to complaint proceedings. Because there is no statutory mandate that limits utilities and licensees reparations recovery time frames, records must be maintained for a significant period longer than those for an oil pipeline which is subject to statutorily mandated recovery period of 3 years from the time the cause of action accrues.

Industry Comments—Commission Focus

EEI and UI stated that the revised retention requirements do not conform to the Commission's new stated focus. They stated that:

The rationale for many of the current retention periods is no longer valid. Retention periods were established for many types of records based on audit cycles carried out by Commission staff. Under current

regulation, many records have 6 or 10 year retention periods. This would make records available during one or two audit cycles that, historically, were on a 3 to 5 year basis. Based on the Commission's previous audit practices, this retention period made sense. Proposals in the NOPR do not reduce many of these prior requirements despite the fact that in 1998, the Commission changed its audit practices to focus on particular issues of concern.

Commission Response

We agree that the Commission has expressly changed its audit focus. That change illustrates the need for the retention of records as outlined in the final rule. The "ad hoc" nature of audits in the future requires that data necessary to complete those audits be retained for a period long enough to provide sufficient data for review. The final rule does reduce the overall retention requirements significantly from the current regulation. Additionally, records are not retained solely for the purpose of audit. Data must be maintained to support current, future, or pending rate cases submitted to the Commission.

Industry Comments—Service Applications

ANR & CIG requested a reduction in the proposed retention period for service applications to 1 year after the date of the application versus 4 years because the terms of the contract would supersede any in the service application.

Commission Response

The statute of limitations for imposing civil penalties for violations is 3 years. A 4 year retention period covers the statute of limitations time period of 3 years plus 1 additional year to conduct any extensive investigation. Service applications for awarded contracts are to be maintained for the same period so it is possible to go back, for audit purposes, to determine the circumstances that existed at that time and not just the current circumstances. The Commission denies the request.

Industry Comments—Gas Measurement Data

ANR & CIG requested that the retention period for gas measurement data be increased from 7 months to 1 year, which could be extended in the event of an unresolved dispute. The concern of the company is that, if measurement data for interconnections was destroyed after seven months because no dispute was filed, it would be difficult to identify and determine the cause of any equipment malfunctions. The companies stated that

a year would be sufficient to identify malfunctions in the absence of a complaint, but that seven months would be too short a time. The companies further stated that maintaining measurement data for a year would not be burdensome.

Commission Response

Considering that most companies maintain records for a complete business year regardless of when such records can be destroyed, the Commission grants this request and has revised the schedule to require gas measurement data be retained for a year. Additionally, the Commission takes this opportunity to clarify that for retention item 13(e) related to "well records, including clearing, bailing, shooting etc., records; rock pressure; open flow; production, gas analysts' reports etc.," records must be maintained for 1 year after the field or relevant production area is abandoned.

Industry Comments—Plant in Service

ANR & CIG, EEI, UI, and Southern requested clarification of the retention requirements for plant in service and the seeming conflict between §§ 125.2(g) and 225.2(g) and §§ 125.3 and 225.3 items 16 (a) and (b) plant ledgers. The companies wanted to know if there were any records related to plant in service which must be retained for a period that is longer than that set forth in the NOPR schedule, and whether the schedule or text controlled.

Commission Response

Sections 125.2(g) and 225.2(g) state that plant in service records must be maintained for 25 years or until the plant is removed from service, all removal/restoration activities are complete, and all costs are removed from the accounting records unless accounting adjustments from reclassification and original cost studies have been approved by the commission having jurisdiction. Therefore, if the plant in question has a life longer than 25 years, §§ 125.2(g) and 225.2(g) govern. Additionally, EEI and UI recommended that general instruction 125.2(g) be deleted as it does not add clarity to the requirement. The Commission denies this request. Sections 125.2(g) and 225.2(g) address more than just the retention periods for plant, they address additions, retirements, and betterments.

Industry Comments—Affiliates

The American Gas Association (AGA), EEI, and UI requested clarification of the changes to §§ 125.2(i) and 225.2(i) regarding imposing retention

requirements on affiliates. AGA believes the Commission intends to impose retention requirements on a natural gas company or jurisdictional electric utility only with respect to situations where an affiliate performs services for it. EEI and UI are concerned that the proposed revised language may be interpreted to expand the Commission's authority inappropriately beyond the current regulation, and recommends the Commission not make the proposed change to the regulations.

Commission Response

The Commission grants the request for clarification, but denies EEI's request not to change the language in § 125.2(i). The Commission does not intend to expand its authority or retention requirements to non-regulated affiliates. Only those records supporting services provided to pipelines or utilities by affiliates must be maintained by the affiliates. Records supporting services performed for affiliates must be maintained by utilities to provide information related to the nature of the transaction, the amounts involved, and the accounts used to record the transactions.

Industry Comments—Technology Management

ARMA requested clarification of the requirements related to §§ 125.3 and 225.3—item 5 Information Technology Management which states "retain as long as it represents an active viable program or for periods prescribed for related output data, whichever is shorter."

Commission Response

The Commission clarifies that this item is strictly referring to software program documentation and any revisions thereto. The original source data used as input for data processing and data processing report outputs must be maintained for the retention period established for that data type, as identified elsewhere in the schedule. To further clarify, the schedule has been modified to include "software" as part of the item text.

Industry Comments—Standardization Across Media

ARMA felt that the non-standardization of retention periods across media types, *i.e.*, paper versus electronic record retention requirements could lead to confusion if an oil, gas, and/or electric company chose electronic records retention to meet Commission requirements. ARMA cited §§ 125.3 and 225.3 item 5 as the source of the confusion. Sections 125.3 and

225.3 item 5 states: "Retain as long as it represents an active viable program or for periods prescribed for related output data, whichever is shorter."

Commission Response

This requirement speaks only to the documentation supporting computer programs still in use by the utility. As long as the program is active and viable the supporting documentation for that program should be retained. If the program has been superseded, the supporting software documentation can be destroyed. Additionally, ARMA states that "the Commission is not requiring the electronic, non-graphic, data and programs be maintained for the same periods as required paper documents. This is incorrect. Sections 125.3 and 225.3 item 5 addresses only computer software documentation and revisions thereto. The original source data used for input for data processing and data processing report printouts must be retained for the applicable periods identified elsewhere in the schedule.

Industry Comments—Uniform Retention Across Media

ARMA, EEI, UI, and Southern want the Commission to adopt uniform retention periods across media types and record types. ARMA stated that the Commission opened the door for companies to maintain records in various media, including digital media, tape disk, or image files.

Commission Response

The Commission purposefully established no specific media type to allow companies flexibility in the selection of media which would provide the ability to adapt quickly to changes in technology without the necessity of obtaining Commission approval of the use of media not provided for in the regulations. We do not see this as leading to confusion but rather to efficiencies of storage. EEI and UI recommend uniformity in retention periods and lowering requirements to maximize efficiencies of business operations. The proposed regulations provide uniformity by type of information to be retained. Further the retention periods are reduced from those presently in place. We believe that the revised regulations will provide for efficiencies and savings from reduced retention periods and unrestricted use of storage media.

Industry Comments—Mergers and Acquisitions

ARMA requested clarification to §§ 125.3 and 225.3 item 20(b)(1) Mergers

and Acquisitions. ARMA states that the use of the phrase “* * * or as ordered by the Commission” along with the identified 10 year time frame for retention of plant and depreciation records relevant to mergers and acquisitions does not provide a true retention guideline. ARMA suggests that a defined period, such as audit completion, should be used.

Commission Comments

The Commission does not concur with using audit completion as the retention requirement. The stated 10 year retention period is valid. A longer period would be on an exception basis as merited by the specifics of a particular case. The longer period would not be an across-the-board, generally applicable requirement. As such, this requirement would not be burdensome on the industry as a whole.

Industry Comments—Retention Costs

EEl and UI raised the issue that excessive record retention imposes substantial costs. They argued that documents with long retention requirements require migration of data to updated or new media several times during their lives. They stated that the migration of data to new media is “costly, time-consuming, and labor intensive” and that savings resulting from the current reduction in retention requirements will not be as significant as the Commission envisions. They pointed out that the Commission’s accounting release on Records Storage Media¹² gave regulated utilities “flexibility to select storage media other than those previously prescribed, the new media requirements will not alleviate the burden of long retention requirements.”

Commission Response

The Commission purposefully did not mandate a storage media in order to reduce additional burden on industry. Migration to updated media is only necessary for those records that are maintained on media that does not provide an archival feature, or cannot be moved to archival media.

Industry Comments—OMB Reauthorization of FERC Form 555

EEl and UI stated that the NOPR failed to adhere to the conditions contained in the Office of Management and Budget’s (OMB) reauthorization of the FERC Form 555, “Preservation of Records of Public Utilities and Licensees, Natural Gas Companies and Oil Pipeline Companies” of July 22,

1998. The companies stated that the Commission followed OMB’s terms of clearance for reduction of the retention period for plant ledgers (from 50 to 25 years), but did not reduce the retention period of general ledgers as outlined in the clearance (from 50 to 10 years).

Commission Response

The Commission has revised the retention period for general ledgers with this final rule to the 10 year period as requested in the OMB reauthorization and by industry.

Industry Response—Reporting Burden

EEl and UI believe that the estimated reporting burden included in the NOPR is inaccurate and low. The companies state that the revised retention requirements may allow utilities to reduce record storage costs, but reductions in labor costs will be minimal. Additionally, long retention requirements will require data to be transferred to different media several times during their lives as companies upgrade their systems.

Commission Response

Burden estimates were based on projected reductions to retention periods and only serve as an average. Staff found no definitive studies on the ratio of staffing to record storage, but substantial savings should result due to the reduction in retention periods coinciding with the opportunity to retain records in whatever medium companies select. Although EEl and UI performed an informal survey and determined that from 9 (small companies) to 26 (large companies) full-time staff were needed to comply with record retention requirements, a report on information management¹³ concluded “There is definitely no simple relationship between the number of records maintained and the number of people needed to maintain them.” The report continued that an informal survey determined that, in many cases, very few people can adequately manage a great deal of paper, especially when there is high control, high automation, and low retrieval rates. The Commission does not concur with industry’s comments.

Industry Comments—Miscellaneous

Southern noted an apparent inadvertent omission in retention item 13.1 Production—Electric (less Nuclear), where an entry for “station and system generation reports and clearance logs”

was omitted from the schedule, and the sub-items below that entry were associated with “generation and output logs with supporting data”. The Commission concurs, and retention item 13.1(c) “Station and system generation reports and clearance logs,” has been added. Additionally, sub-items 13.1(b)(1) and (b)(2) have been renumbered to sub-items 13.1(c)(1) Hydro-electric, and (2) Steam and others, and been properly associated with item 13.1(c). Retention items 13.1(c) through (f) have been renumbered to 13.1(d) through (g).

Southern requested clarification of the textual descriptions of retention items 34(c) and (d) tax records between the schedule and the NOPR appendix. The NOPR appendix was included for informational purposes only, and may have included preliminary language revised in the final NOPR; the language included in the regulatory text governs.

Southern noted that the retention period for retention item 38 Statistics, was listed as 5 years in the schedule and 3 years in the NOPR appendix, and requested clarification of the proposed retention period. The NOPR appendix was included for informational purposes only; the language included in the regulatory text governs, and the correct retention period is 5 years.

Southern requested clarification on whether the Commission would categorize customer service orders as contracts, work orders, or some other record item under the proposed rule. The characterization of a service order lies in the nature of the order, there is no generic definition or answer.

EEl and UI request clarification of the revised retention requirement for Journal Vouchers, retention item 8(b)(1) “Charging Plant Accounts,” in the appendix to the NOPR. They point out that the change between the current and proposed retention periods is summarized as revised, but that the current period is 6 years and the proposed revised period is 25 years, and state that this represents an increase and not a reduction to the current schedule. All the Commission has done is clarify an already existing regulation. The current schedule identifies a retention period of 6 years for journal vouchers charging plant accounts, but also requires regulated companies to see current § 125.2(j) for additional governing language. Section 125.2(j) requires records related to plant be retained a minimum of 25 years. EEl and UI are correct that there has been no reduction in the retention requirement, but neither has there been an increase.

Southern requested adoption of consistent retention periods for the

¹² See note 8.

¹³ Ann Balough, “The Cost of Information Management”, *The Records & Retrieval Report, The Newsletter for Professional Information Managers*, Vol. 13, No. 10, Dec. 1997.

same or similar record types, *i.e.*, service contracts and commodity contracts. Southern points out that in § 125.3 items 3(a) service contracts, and 3(b) commodity contracts the retention periods are 3 years and 4 years respectively. Also, in § 125.3 item 29 customer service contracts, the retention period is 4 years. The Commission concurs and clarifies that the retention period for service, commodity, and customer service contracts is 4 years. Section 125.3 item 3(a) has been revised to reflect this clarification.

Audit Requirement Changes

In addition, the Commission is revising the public utilities and licensees and natural gas companies requirements that are tied to "FERC audit reports." The Commission no longer audits on a 3 year cycle. Instead it conducts industry wide audits on specific Commission accounting issues. The Commission's changes to its regulatory requirements regarding audits range between two and six years.

Item Number and Description

1. Annual reports or statements to stockholders.
26. Material ledgers.
29. Customers service applications and contracts.
30. Rate Schedules.

C. Additions to Public Utilities and Licensees and Natural Gas Companies Records Retention Periods

To continue to meet its regulatory requirements the Commission is adding records retention requirements for the following public utilities and licensees, and natural gas companies record categories:

Item Number and Description

20. (b) Appraisals and valuations.
21. (a) The original or reproduction of engineering records, drawings and other supporting data.

35. Statement of funds and deposits. Retention item 20 (b) is added to include property or investments that are written up or down as a result of mergers or acquisitions, asset impairments, and other basis. The records retention item 20 (b) will be 10 years after the event. These added records retention requirements will allow the Commission adequate time to review these events as necessary.

Retention item 21 (a) maps, diagrams, profiles, photographs, field survey notes, plot plan, detail drawings, and records of engineering studies and similar records showing the location of proposed or as-constructed facilities is changed to include retention until

retired. These records are needed for our environmental reviews, and therefore should be retained until the facilities are retired.

Retention item 35, Statement of funds and deposits, is revised in response to FERC policy statement on Post-Employment Benefits Other Than Pension¹⁴ (PBOP), to require retention of records until the fund is dissolved or terminated. This information is necessary to allow the Commission to ensure the proper disposition of rate payer contributions for PBOPs.

D. Removal of Public Utilities and Licensees, and Natural Gas Companies Reserve Accounts

The Commission is removing all but one reserve item in both public utilities and licensees, and natural gas companies (see schedules at §§ 125.3 and 225.3). The removal of these reserve items allows the records retention schedule to reflect only the records the Commission needs to fulfill its mission. However, we will keep reserve item 37 as a place holder in the public utilities and licensees records retention schedule in order to align the public utilities and licensees and natural gas companies item numbers.

Industry Comments

Southern requested that the Commission refrain from deleting the reserve items and from renumbering the § 125.3 schedule, as such actions would require the company procedures and guidelines citing items in the schedule to be revised. Southern Company stated that re-numbering the schedule solely for the purpose of deleting [reserved] items creates an unnecessary burden for Southern.

Commission Response

The purpose of the NOPR was to bring the retention periods up-to-date. Therefore, this wholesale change and a complete renumbering of the regulatory text is appropriate. Removal of the reserved items better identifies only those records the Commission needs to fulfill its mission, and eliminates confusion for those entities that consist of both public utilities and licensees and natural gas companies. The Commission also feels that the prospective nature and the implementation date of the final rule provides sufficient time for companies to update their regulations prior to the new schedule going into effect. Therefore, the Commission denies this request.

E. Changes to Oil Pipeline Companies General Instructions

The Commission is reorganizing the oil pipeline companies general instructions to better align them to the public utilities and licensees, and natural gas companies general instructions (see § 356.2). This reorganization makes the general instructions for all industries consistent.

F. Shortening of Oil Pipeline Companies Records Retention Periods

The Commission shortened certain oil pipeline companies retention periods for 7 of the 24 items to 3 years for § 356 (see schedule at § 356.3). These reductions represent a significant reduction in the reporting burden on the oil industry. They are based on the statutory mandate that limits oil pipeline company reparations recovery to 3 years from the time the cause of action accrues.¹⁵ We are reducing the following oil pipeline companies records retention requirements to 3 years:

Item Number and Description

2. Minutes of Directors and other corporate meetings.
4. (a) Contracts and related papers.
7. (a) and (b) Ledgers.
8. (a) and (b) Journals.
9. (a) and (b) Vouchers.
11. Records of accounting.
24. (a) Annual financial operating reports.

G. Additions to Oil Pipeline Companies Records Retention Periods

The Commission revised records retention requirements for the following oil pipeline companies record items (see schedule at § 356.3):

Item Number and Description

12. (d) (1) Group method and depreciation rate.
12. (g) Files of detailed authorizations for expenditures.

Record item 12 (d) (1) is revised from 10 years to 3 years after disposition of property because the Commission needs to review these records at any time during the life of the asset. Retention item 12 (g) is also revised to extend the period from 3 years from acquisition to 3 years after disposition of property because the Commission must be able to review any records related to property or equipment at any time during the life of the asset.

IV. Environmental Statement

Commission regulations require that an environmental assessment or an

¹⁴ 61 FERC ¶61,330 (1992).

¹⁵ 49 U.S.C. 1, Sec. 16(3).

environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.¹⁶ No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, procedural or that does not substantially change the effect of legislation or regulations being amended,¹⁷ and also for information gathering, analysis, and dissemination.¹⁸ The final rule changes do not substantially change the effect of the underlying legislation or change the forms. Accordingly, no environmental assessments are necessary.

V. Regulatory Flexibility Act

The Commission received no comments on its certification, in the NOPR, that the proposed rule would not

have a significant economic impact on a substantial number of small entities and that an initial Regulatory Flexibility Act (RFA)¹⁹ analysis is not required.

In *Mid-Tex Elect. Coop. v. FERC*, 773 F. 2d 327 (D. C. Cir. 1985), the court found that Congress, in passing the RFA, intended agencies to limit their consideration “to small entities that would be directly regulated” by proposed rules. *Id.* at 342. The court further concluded that “the relevant ‘economic impact’ was the impact of compliance with the proposed rule on regulated small entities.” *Id.* at 342.

This final rule will not have an adverse impact on small entities, nor will it impose upon them any significant costs of compliance. Rather, this rule will significantly reduce the record keeping burden on all

jurisdictional entities, including small entities. Most entities regulated by the Commission do not fall within the RFA’s definition of a small entity.²⁰ Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VI. Information Collection Statement

The following collection of information contained in this final rule was submitted to the Office of Management and Budget (OMB) for review under 3507(d) of the Paperwork Reduction Act of 1995.²¹ FERC identifies the information retained under parts 125, 225, and 356 as FERC Form 555. The reporting burden to implement this final rule is as follows:

Data collection	No. of respondents	No. of responses	Hrs. per response	Total annual hours
FERC-555	515	1	1080	556,200

The NOPR was submitted to OMB at the time of issuance. OMB terms of clearance, provided in their May 19, 2000 response, was that the NOPR “engendered significant public comment and that OMB will review the package at the final rule stage after FERC has completed any revisions to the information collection.” Comments were received from EEI and UI and are addressed in Section III—Discussion. The retention requirements remain essentially the same as those in the NOPR, therefore, the estimated annual filing burden remains the same. The burden estimates for complying with this rule are set out in the preceding Table.

Total Annual Hours for Collection (Reporting + Record keeping, (if appropriate) = 556,200). Based on the Commission’s experience with current record keeping requirement practices, it is estimated that about 1,080 hours²² are needed to retain records per year, for a total annual burden of 556,200 hours. The Commission estimates that the final rule will significantly decrease the burden of the current regulations by shortening the retention periods for certain records.

Information Collection Costs: The Commission has projected the average annualized cost for all respondents to comply with these requirements to be:

Annualized Capital/Startup Costs: \$0.00.

Annualized Costs (Operations & maintenance): \$29,274,430.

Total Annualized Costs: \$29,274,430.

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule.²³ Accordingly, pursuant to OMB regulations the Commission provided notice of information collection to OMB.

Title: FERC Form 555, Preservation of Records of Public Utilities, Natural Gas Companies, and Oil Pipeline Companies.

Action: Data Collection.

OMB Control No.: 1902-0098, the respondent shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

Respondents: Business or other for profit, including small businesses.

Frequency of Responses: On Occasion.

Necessity of Information: The final rule revises the requirements contained in 18 CFR parts 125, 225, and 356.

Internal Review: The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the recordkeeping. The official records maintained by the

regulated companies in accordance with the Schedules provided in parts 125, 225, and 356 are used by the companies as the basis of their required rate filings and reports to the Commission. The Federal Power Act, the Natural Gas Act, and Interstate Commerce Act, require regulated companies to keep such records as the Commission may prescribe “as necessary or appropriate for purposes of administration” of these acts. One of the Commission’s most important functions under these acts is ensuring that rates charged by regulated companies for certain transactions are “just and reasonable.” Almost all the records the Commission requires to be retained are for the purpose of providing an adequate base of information to make decisions on the “reasonableness” of rates. Similarly, the length of retention periods have been based on the time that information will be needed to make decisions on the impact of rates. The records are necessary as they are used by the Commission’s staff during compliance reviews and special analyses performed as deemed necessary by the Commission. These requirements conform to the Commission’s plan for efficient information collection within the public utilities and licensees, natural gas companies, and oil pipeline companies.

¹⁶ Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987).

¹⁷ 18 CFR 380.4(a)(2)(ii).

¹⁸ 18 CFR 380.4(a)(5).

¹⁹ 5 U.S.C. 601-612.

²⁰ 5 U.S.C. 601(3), citing to 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a “small-business concern” as a business which is independently owned and operated and which is not dominant in its field of operation.

²¹ 44 U.S.C. 3507(d).

²² Previous to this proposed rule, the reporting burden was estimated at approximately 2400 hours per response.

²³ 5 CFR 1320.11.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208-1415, fax: (202) 208-2425, email: mike.miller@ferc.fed.us).

For submitting comments concerning the collection of information and the associated burden estimate, please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. (Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395-3087, fax: (202) 395-7285).

VII. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.fed.us>) and in FERC's Public Reference Room during normal business hours (8:30 A.M. to 5:00 P.M. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC, 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission's Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal

business hours from our Help line at (202) 208-2222 (e-mail to Webmaster@ferc.fed.us) or the Public Reference Room at (202) 208-1371 (e-mail to public.referenceroom@ferc.fed.us).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

VIII. Effective Date and Congressional Notification

This rule will take effect on January 1, 2001. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this Rule is not a "major rule" within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.²⁴ The Commission will submit the final rule to both houses of Congress and the General Accounting Office.²⁵

List of Subjects

18 CFR Part 125

Electric power; Electric utilities; Reporting and record keeping requirements.

18 CFR Part 225

Natural gas; Reporting and record keeping requirements.

18 CFR Part 356

Pipelines; Reporting and record keeping requirements

By the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission amends parts 125, 225, and 356 Chapter I, Title 18 of the Code of Federal Regulations, as follows:

PART 125—PRESERVATION OF RECORDS OF PUBLIC UTILITIES AND LICENSEES.

1. The authority for part 125 is revised to read as follows:

Authority: 16 U.S.C. 825, 825c, and 825h; 44 U.S.C. 3501 *et seq.*

2. Section 125.1 is revised to read as follows:

§ 125.1 Promulgation.

This Part is prescribed and promulgated as the regulations governing the preservation of records by

public utilities subject to the jurisdiction of the Commission and by licensees holding licenses issued by the Commission, to the extent and in the manner set forth therein.

3. In § 125.2, paragraphs (a)(1) through (a)(3), and paragraphs (d) through (m) are revised to read as follows, and paragraph (n) is removed:

§ 125.2 General instructions.

(a) *Scope of this part.* (1) The regulations in this part apply to all books of account and other records prepared by or on behalf of the public utility or licensee. See item 40 of the schedule (§ 125.3) for those records that come into possession of the public utility or licensee in connection with the acquisition of property, such as purchase, consolidation, merger, etc.

(2) The regulations in this part should not be construed as excusing compliance with other lawful requirements of any other governmental body, Federal or State, prescribing other record keeping requirements or for preservation of records longer than those prescribed in this part.

(3) To the extent that any Commission regulations may provide for a different retention period, the records should be retained for the longer of the retention periods.

* * * * *

(d) *Record storage media.* Each public utility and licensee has the flexibility to select its own storage media subject to the following conditions.

(1) The storage media must have a life expectancy at least equal to the applicable record retention period provided in § 125.3 unless there is a quality transfer from one media to another with no loss of data.

(2) Each public utility and licensee is required to implement internal control procedures that assure the reliability of, and ready access to, data stored on machine readable media. Internal control procedures must be documented by a responsible supervisory official.

(3) Each transfer of data from one media to another must be verified for accuracy and documented. Software and hardware required to produce readable records must be retained for the same period the media format is used.

(e) *Destruction of records.* At the expiration of the retention period, public utilities and licensees may use any appropriate method to destroy records.

(f) *Premature destruction or loss of records.* When records are destroyed or lost before the expiration of the prescribed period of retention, a certified statement listing, as far as may be determined, the records destroyed

²⁴ 5 U.S.C. 804(2).

²⁵ 5 U.S.C. 801(a)(1)(A).

and describing the circumstances of accidental or other premature destruction or loss must be filed with the Commission within ninety (90) days from the date of discovery of the destruction.

(g) *Schedule of records and periods of retention.* (1) Records related to plant in service must be retained until the facilities are permanently removed from utility service, all removal and restoration activities are completed, and all costs are retired from the accounting records unless accounting adjustments resulting from reclassification and original costs studies have been approved by the regulatory commission having jurisdiction. If the plant is sold, the associated records or copies thereof, must be transferred to the new owners.

(2) Records related to hydroelectric facilities and additions, retirements, and betterments thereto must be retained until:

(i) The Commission has determined the actual legitimate original cost of the facilities, or the licenses are surrendered. If the plant is sold, the associated records or copies thereof, must be transferred to the new owners.

(ii) Records related to the determination of amortization reserves pursuant to section 10(d) of the Federal Power Act must be retained until a final determination and adjudication of the amortization reserves are made.

(h) *Retention periods designated "Destroy at option".* "Destroy at option" constitutes authorization for destruction of records at managements' discretion if it does not conflict with other legal retention requirements or usefulness of such records in satisfying pending regulatory actions or directives.

(i) *Records of services performed by associated companies.* Public utilities and licensees must assure the availability of records of services performed by and for associated or affiliated companies with supporting cost information for the periods indicated in § 125.3 as necessary to be able to readily furnish detailed information as to the nature of the transaction, the amounts involved, and

the accounts used to record the transactions.

(j) *Index of records.* Public utilities and licensees must arrange, file, and index records so records may be readily identified and made available to Commission representatives.

(k) *Rate case.* Notwithstanding the minimum retention periods provided in these regulations, if a public utility or licensee wants to reflect costs in a current, future, or pending rate case, or if a public utility or licensee has abandoned or retired a plant subsequent to the test period of the utility's rate case, the utility must retain the appropriate records to support the costs and adjustments proposed in the current or next rate case.

(l) *Pending complaint litigation or governmental proceedings.* Notwithstanding the minimum requirements, if a public utility or licensee is involved in pending litigation, complaint procedures, proceedings remanded by the court, or governmental proceedings, it must retain all relevant records.

(m) *Life or mortality study data.* Life or mortality study data for depreciation purposes must be retained for 25 years or for 10 years after plant is retired, whichever is longer.

* * * * *

4. Section 125.3 is revised to read as follows:

§ 125.3 Schedule of records and periods of retention.

Table of Contents

Corporate and General

1. Reports to stockholders.
2. Organizational documents.
3. Contracts including amendments and agreements.
4. Accountants' and auditors' reports.

Information Technology Management

5. Automatic data processing records.

General Accounting Records

6. General and subsidiary ledgers.
7. Journals: General and subsidiary.
8. Journal vouchers and entries.
9. Cash books.

10. Voucher registers.
11. Vouchers.

Insurance

12. Insurance records.

Operations and Maintenance

- 13.1. Production—Public utilities and licensees (less nuclear).
- 13.2. Production—Nuclear.
14. Transmission and distribution—Public utilities and licensees.
15. Maintenance work orders and job orders.

Plant and Depreciation

16. Plant ledgers.
17. Construction work in progress ledgers.
18. Retirement work in progress ledgers.
19. Summary sheets.
20. Appraisals and valuations.
21. Engineering records.
22. Contracts relating to utility plant.
23. Reclassification of utility plant account records.
24. Accumulated depreciation and depletion of utility plant account records.

Purchase and Stores

25. Procurement.
26. Material ledgers.
27. Materials and supplies received and issued.
28. Records of sales of scrap and materials and supplies.

Revenue Accounting and Collection

29. Customers' service applications and contracts.
30. Rate schedules.
31. Maximum demand and demand meter record cards.
32. Miscellaneous billing data.
33. Revenue summaries.

Tax

34. Tax records.

Treasury

35. Statements of funds and deposits.
36. Records of deposits with banks and others.

Miscellaneous

37. [Reserved.]
38. Statistics.
39. Budgets and other forecasts.
40. Records of predecessors companies.
41. Reports to Federal and State regulatory commissions.
42. Advertising.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION

Item No. and description	Retention period
Corporate and General	
1. Reports to stockholders: Annual reports or statements to stockholders.	5 years.
2. Organizational documents:	
(a) Minute books of stockholders', directors', and directors' committee meetings.	5 years or termination of the corporation's existence, whichever occurs first.
(b) Titles, franchises, and licenses: Copies of formal orders of regulatory commissions served upon the utility.	6 years after final non-appealable order.
3. Contracts, including amendments and agreements (except contracts provided for elsewhere):	

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
(a) Service contracts, such as for management, accounting, and financial services.	All contracts, related memoranda, and revisions should be retained for 4 years after expiration or until the conclusion of any contract disputes pertaining to such contracts, whichever is later.
(b) Contracts with others for transmission or the purchase, sale or interchange of product.	All contracts, related memoranda, and revisions should be retained for 4 years after expiration or until the conclusion of any contract disputes or governmental proceedings pertaining to such contracts, whichever is later.
(c) Memoranda essential to clarifying or explaining provisions of contracts listed above, including requests for discounts.	For the same periods as contracts to which they relate.
(d) Card or book records of contracts, leases, and agreements made, showing dates of expirations and of renewals, memoranda of receipts, and payments under such contracts.	For the same periods as contracts to which they relate.
4. Accountants' and auditors' reports:	
(a) Reports of examinations and audits by accountants and auditors not in the regular employ of the utility (such as reports of public accounting firms and commission accountants).	5 years after the date of the report.
(b) Internal audit reports and working papers	5 years after the date of the report.
Information Technology Management	
5. Automatic data processing records (retain original source data used as input for data processing and data processing report printouts for the applicable periods prescribed elsewhere in the schedule): Software program documentation and revisions thereto.	Retain as long as it represents an active viable program or for periods prescribed for related output data, whichever is shorter.
General Accounting Records	
6. General and subsidiary ledgers:	
(a) Ledgers:	
(1) General ledgers	10 years.
(2) Ledgers subsidiary or auxiliary to general ledgers except ledgers provided for elsewhere.	10 years.
(b) Indexes:	
(1) Indexes to general ledgers	10 years.
(2) Indexes to subsidiary ledgers except ledgers provided for elsewhere.	10 years.
(c) Trial balance sheets of general and subsidiary ledgers	2 years.
7. Journals: General and subsidiary	10 years.
8. Journal vouchers and journal entries including supporting detail:	
(a) Journal vouchers and journal entries	10 years.
(b) Analyses, summarization, distributions, and other computations which support journal vouchers and journal entries:	
(1) Charging plant accounts	25 years.
(2) Charging all other accounts	6 years.
9. Cash books: General and subsidiary or auxiliary books	5 years after close of fiscal year.
10. Voucher registers: Voucher registers or similar records when used as a source document.	5 years.
11. Vouchers:	
(a) Paid and canceled vouchers (one copy-analysis sheets showing detailed distribution of charges on individual vouchers and other supporting papers).	5 years.
(b) Original bills and invoices for materials, services, etc., paid by vouchers.	5 years.
(c) Paid checks and receipts for payments of specific vouchers	5 years.
(d) Authorization for the payment of specific vouchers	5 years.
(e) Lists of unaudited bills (accounts payable), list of vouchers transmitted, and memoranda regarding changes in audited bills.	Destroy at option.
(f) Voucher indexes	Destroy at option.
Insurance	
12. Insurance records:	
(a) Records of insurance policies in force, showing coverage, premiums paid, and expiration dates.	Destroy at option after expiration of such policies.
(b) Records of amounts recovered from insurance companies in connection with losses and of claims against insurance companies, including reports of losses, and supporting papers.	6 years.
Operations and Maintenance	
13.1 Production—Public utilities and licensees (less Nuclear):	
(a) Boiler-tube failure report	3 years.
(b) Generation and output logs with supporting data:	3 years.
(c) Station and system generation reports and clearance logs:	
(1) Hydro-electric	25 years.
(2) Steam and others	6 years.
(d) Generating high-tension and low-tension load records	3 years.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
(e) Load curves, temperature logs, coal, and water logs	3 years.
(f) Gauge-reading reports	2 years, except river flow data collected in connection with hydro operation must be retained for life of corporation.
(g) Recording instrumentation charts	1 year, except where the basic chart information is transferred to another record, the charts need only be retained 6 months provided the record containing the basic data is retained 1 year.
13.2 Production—Nuclear:	
For informational purposes, refer to the document retention requirements of the Nuclear Regulatory Commission.	
14. Transmission and distribution—Public utilities and licensees.	
(a) Substation and transmission line logs	3 years.
(b) System operator's daily logs and reports of operation	3 years.
(c) Transformer history records	For life of transformer.
(d) Records of transformer inspections, oil tests, etc	Destroy at option.
15. Maintenance work orders and job orders:	
(a) Authorizations for expenditures for maintenance work to be covered by work orders, including memoranda showing the estimates of costs to be incurred.	5 years.
(b) Work order sheets to which are posted in detail the entries for labor, material, and other charges in connection with maintenance, and other work pertaining to utility operations.	5 years.
(c) Summaries of expenditures on maintenance and job orders and clearances to operating other accounts (exclusive of plant accounts).	5 years.
Plant and Depreciation	
16. Plant ledgers:	
(a) Ledgers of utility plant accounts including land and other detailed ledgers showing the cost of utility plant by classes.	25 years.
(b) Continuing plant inventory ledger, book or card records showing description, location, quantities, cost, etc., of physical units (or items) of utility plant owned.	25 years.
17. Construction work in progress ledgers, work orders, and supplemental records:	
(a) Construction work in progress ledgers	5 years after clearance to plant account, provided continuing plant inventory records are maintained; otherwise 5 years after plant is retired.
(b) Work orders sheets to which are posted in summary form or in detail the entries for labor, materials, and other charges for utility plant additions and the entries closing the work orders to utility plant in service at completion.	5 years after clearance to plant account, provided continuing plant inventory records are maintained; otherwise 5 years after plant is retired.
(c) Authorizations for expenditures for additions to utility plant, including memoranda showing the detailed estimates of cost, and the bases therefor (including original and revised or subsequent authorizations).	5 years after clearance to plant account except where there are ongoing Commission proceedings.
(d) Requisitions and registers of authorizations for utility plant expenditures.	5 years after clearance to plant account except where there are ongoing Commission proceedings.
(e) Completion or performance reports showing comparison between authorized estimates and actual expenditures for utility plant additions.	5 years after clearance to plant account except where there are ongoing Commission proceedings.
(f) Analysis or cost reports showing quantities of materials used, unit costs, number of man-hours etc., in connection with completed construction project.	5 years after clearance to plant account except where there are ongoing Commission proceedings.
(g) Records and reports pertaining to progress of construction work, the order in which jobs are to be completed, and similar records which do not form a basis of entries to the accounts.	Destroy at option.
18. Retirement work in progress ledgers, work orders, and supplemental records:	
(a) Work order sheets to which are posted the entries for removal costs, materials recovered, and credits to utility plant accounts for cost of plant retirement.	5 years after plant is retired.
(b) Authorizations for retirement of utility plant, including memoranda showing the basis for determination to be retired and estimates of salvage and removal costs.	5 years after plant is retired.
(c) Registers of retirement work	5 years.
19. Summary sheets, distribution sheets, reports, statements, and papers directly supporting debits and credits to utility plant accounts not covered by construction or retirement work orders and their supporting records.	5 years.
20. Appraisals and valuations:	

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
(a) Appraisals and valuations made by the company of its properties or investments or of the properties or investments of any associated companies. (Includes all records essential thereto.).	3 years after appraisal.
(b) Determinations of amounts by which properties or investments of the company or any of its associated companies will be either written up or written down as a result of:	
(1) Mergers or acquisitions	10 years after completion of transaction or as ordered by the Commission.
(2) Asset impairments	10 years after recognition of asset impairment.
(3) Other bases	10 years after the asset was written up or down.
21. The original or reproduction of engineering records, drawings, and other supporting data for proposed or as-constructed utility facilities: Maps, diagrams, profiles, photographs, field survey notes, plot plan, detail drawings, records of engineering studies, and similar records showing the location of proposed or as-constructed facilities.	Retain until retired.
22. Contracts relating to utility plant:	
(a) Contracts relating to acquisition or sale of plant	6 years after plant is retired or sold.
(b) Contracts and other agreements relating to services performed in connection with construction of utility plant (including contracts for the construction of plant by others for the utility and for supervision and engineering relating to construction work).	6 years after plant is retired or sold.
23. Records pertaining to reclassification of utility plant accounts to conform to prescribed systems of accounts including supporting papers showing the bases for such reclassifications.	6 years.
24. Records of accumulated provisions for depreciation and depletion of utility plant and supporting computation of expense:	
(a) Detailed records or analysis sheets segregating the accumulated depreciation according to functional classification of plant.	25 years.
(b) Records reflecting the service life of property and the percentage of salvage and cost of removal for property retired from each account for depreciable utility plant.	25 years.
Purchase and Stores	
25. Procurement:	
(a) Agreements entered into for the acquisition of goods or the performance of services. Includes all forms of agreements not specifically set forth in Subsection 7 such as but not limited to: Letters of intent, exchange of correspondence, master agreements, term contracts, rental agreements, and the various types of purchase orders:	
(1) For goods or services relating to plant construction	6 years.
(2) For other goods or services	6 years.
(b) Supporting documents including accepted and unaccepted bids or proposals (summaries of unaccepted bids or proposals may be kept in lieu of originals) evidencing all relevant elements of the procurement.	6 years.
26. Material ledgers: Ledger sheets of materials and supplies received, issued, and on hand	6 years after the date the records/ledgers were created.
27. Materials and supplies received and issued: Records showing the detailed distribution of materials and supplies issued during accounting periods	6 years.
28. Records of sales of scrap and materials and supplies:	
(a) Authorization for sale of scrap and materials and supplies	3 years.
(b) Contracts for sale of scrap materials and supplies	3 years.
Revenue Accounting and Collecting	
29. Customers' service applications and contracts: Contracts, including amendments for extensions of service, for which contributions are made by customers and others	4 years after expiration.
30. Rate schedules: General files of published rate sheets and schedules of utility service. Including schedules suspended or superseded	6 years after published rate sheets and schedules are superseded or no longer used to charge for utility service.
31. Maximum demand, and demand meter record cards	1 year, except where the basic chart information is transferred to another record the charts need only be retained 6 months, provided the basic data is retained 1 year.
32. Miscellaneous billing data: Billing department's copies of contracts with customers (other than contracts in general files)	Destroy at option.
33. Revenue summaries: Summaries of monthly operating revenues according to classes of service. Including summaries of forfeited discounts and penalties	5 years.
Tax	
34. Tax records:	

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
(a) Copies of tax returns and supporting schedules filed with taxing authorities, supporting working papers, records of appeals of tax bills, and receipts for payment. See Subsection 11(b) for vouchers evidencing disbursements: (1) Income tax returns (2) Property tax returns (3) Sales and other use taxes (4) Other taxes (5) Agreements between associate companies as to allocation of consolidated income taxes. (6) Schedule of allocation of consolidated Federal income taxes among associate companies. (b) Filings with taxing authorities to qualify employee benefit plans. (c) Information returns and reports to taxing authorities	2 years after final tax liability is determined. 2 years after final tax liability is determined. 2 years. 2 years after final tax liability is determined. 2 years after final tax liability is determined. 2 years after final tax liability is determined. 5 years after discontinuance of plan. 3 years after final tax liability is determined.
Treasury	
35. Statements of funds and deposits (a) Statements of periodic deposits with fund administrators or trustees. (b) Statements of periodic withdrawals from fund (c) Statements prepared by fund administrator or trustees of fund activity including: (1) Beginning of the year balance of fund; (2) Deposits with the fund; (3) Acquisition of investments held by the fund; (4) Disposition of investments held by the fund; (5) Disbursements from the fund, including party to whom disbursement was made; (6) End of year balance of fund.	For nuclear decommissioning funds, retain records for all items listed for 3 years after final decommissioning is completed. If amortization reserve funds related to licensed projects are maintained, retain until the Commission makes a final determination of the disposition of amortization reserves. Retain records for the most recent 3 years. Retain records for the most recent 3 years. Retain records until the fund is dissolved or terminated.
36. Records of deposits with banks and others: (a) Statements from depositories showing the details of funds received, disbursed, transferred, and balances on deposit. (b) Check stubs, registers, or other records of checks issued	Destroy at option after completion of audit by independent accountants. 3 years.
Miscellaneous	
37. [Reserved]	
38. Statistics: Financial, operating and statistical reports used for internal administrative or operating purposes.	5 years.
39. Budgets and other forecasts (prepared for internal administrative or operating purposes) of estimated future income, receipts and expenditures in connection with financing, construction and operations, including acquisitions and disposals of properties or investments.	3 years.
40. Records of predecessor companies	Retain consistent with the requirements for the same types of records of the utility.
41. Reports to Federal and State regulatory commissions including annual financial, operating and statistical reports.	5 years.
42. Advertising: Copies of advertisements by or for the company on behalf of itself or any associate company in newspapers, magazines, and other publications, including costs and other records relevant thereto (excluding advertising of appliances, employment opportunities, routine notices, and invitations for bids all of which may be destroyed at option).	2 years.

PART 225—PRESERVATION OF RECORDS OF NATURAL GAS COMPANIES

5. The authority for part 225 is revised to read as follows:

Authority: 15 U.S.C. 717-717w, 3301-3432; 16 U.S.C. 792-828c; 42 U.S.C. 7101-7352; E.O. 12009, 3 CFR 1978 Comp. p. 142.

6. Section 225.1 is revised to read as follows:

§ 225.1 Promulgation.

This part is prescribed and promulgated as the regulations governing the preservation of records by natural gas companies subject to the jurisdiction of the Commission, to the extent and in the manner set forth therein.

7. In § 225.2, paragraphs (a) (1) through (a) (3), and paragraphs (d) through (m) are revised to read as follows, and paragraph (n) is removed:

§ 225.2 General instructions.

(a) *Scope of this part.* (1) The regulations in this part must apply to all books of account and other records prepared by or on behalf of the natural gas company. See item 40 of the schedule for those records that come into possession of the natural gas company in connection with the acquisition of property, such as purchases, consolidation, merger, etc.

(2) The regulations in this part should not be construed as excusing compliance with other lawful requirements of any other governmental body, Federal or State, prescribing other record keeping requirements, or for preservation of records for periods longer than those prescribed in this part.

(3) To the extent that any Commission regulations may provide for a different retention period, the records should be retained for the longer of the retention periods.

* * * * *

(d) *Record storage media.* Each natural gas company has the flexibility to select its own storage media subject to the following conditions.

(1) The storage media must have a life expectancy at least equal to the applicable record retention period provided in § 225.3 unless there is a quality transfer from one media to another with no loss of data.

(2) Each natural gas company is required to implement internal control procedures that assure the reliability of and ready access to data stored on machine readable media. Internal control procedures must be documented by a responsible supervisory official.

(3) Each transfer of data from one media to another must be verified for accuracy and documented. Software and hardware required to produce readable records must be retained for the same period the media format is used.

(e) *Destruction of records.* At the expiration of the records retention period, natural gas companies may use any appropriate method to destroy records.

(f) *Premature destruction or loss of records.* When records are destroyed or lost before the expiration of the prescribed period of retention, a certified statement listing, as far as may be determined, the records destroyed and describing the circumstances of accidental or other premature destruction or loss must be filed with the Commission within ninety (90) days from the date of discovery of the destruction.

(g) *Schedule of records and periods of retention.* (1) Records related to plant in service must be retained until the facilities are permanently removed from service, all removal and restoration activities are completed, and all costs are retired from the accounting records unless accounting adjustments resulting from reclassification and original costs studies have been approved by the regulatory commission having

jurisdiction. If the plant is sold, the associated records or copies thereof, must be transferred to the new owners.

(2) Records related to additions, retirements, and betterments thereto must be retained until the Commission has determined the actual legitimate original cost of the facilities.

(h) *Retention periods designated "Destroy at option".* "Destroy at option" constitutes authorization for destruction of records at managements' discretion if it does not conflict with other legal retention requirements or usefulness of such records in satisfying pending regulatory actions or directives.

(i) *Records of services performed by associated companies.* The natural gas companies must assure the availability of records of services performed by associated or affiliated companies with supporting cost information for the periods indicated in § 225.3 as necessary to be able to readily furnish detailed information as to the nature of the transaction, the amounts involved, and the accounts used to record the transactions.

(j) *Index of records.* Natural gas companies must arrange, file, and index records so they may be readily identified and made available to Commission representatives.

(k) *Rate case.* Notwithstanding the minimum retention periods provided in these regulations, if a natural gas company intends to reflect costs in a current, pending, or future rate case, or if a natural gas company has abandoned or retired a plant subsequent to the test period of its last rate case, it must retain all relevant records.

(l) *Pending complaint litigation or governmental proceeding.* Notwithstanding the minimum requirements, if a natural gas company is involved in pending litigation, complaint procedures, proceedings remanded by the court, or governmental proceedings, it must retain all relevant records.

(m) *Life or mortality study data.* Life or mortality study data for depreciation purposes must be retained for 25 years or for 10 years after plant is retired whichever is longer.

* * * * *

8. Section 225.3 is revised to read as follows:

§ 225.3 Schedule of records and periods of retention.

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38. Statistics.

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SCHEDULE OF RECORDS AND PERIODS OF RETENTION

Item No. and description	Retention period
Corporate and General	
1. Reports to stockholders: Annual reports or statements to stockholders.	5 years.
2. Organizational documents:	
(a) Minute books of stockholders', directors', and directors' committee meetings.	5 years or termination of the corporation's existence, whichever occurs first.
(b) Titles, franchises, and licenses: Copies of formal orders of regulatory commissions served upon the natural gas company.	6 years after final non-appealable order.
3. Contracts including amendments and agreements (except contracts provided for elsewhere):	
(a) Service contracts, such as for management, accounting, and financial services.	All contracts, related memoranda, and revisions should be retained for 4 years after expiration or until the conclusion of any contract disputes pertaining to such contracts, whichever is later.
(b) Contracts with others for transportation or for the purchase, sale or interchange of product.	All contracts, related memoranda, and revisions should be retained for 4 years after expiration or until the conclusion of any contract disputes or governmental proceedings pertaining to such contracts, whichever is later.
(c) Memoranda essential to clarifying or explaining provisions of contracts listed above, including requests for discounts.	For the same periods as contracts to which they relate.
(d) Card or book records of contracts, leases, and agreements made that show dates of expirations, renewals, memoranda of receipts, and payments under such contracts.	For the same periods as contracts to which they relate.
4. Accountants' and auditors' reports:	
(a) Reports of examinations and audits by accountants and auditors not in the regular employ of the natural gas company (such as reports of public accounting firms and Commission accountants).	5 years after the date of the report.
(b) Internal audit reports and working papers	5 years after the date of the report.
Information Technology Management	
5. Automatic data processing records (retain original source data used as input for data processing and data processing report printouts for the applicable periods prescribed elsewhere in the schedule): Software program documentation and revisions thereto.	Retain as long as it represents an active viable program or for periods prescribed for related output data, whichever is shorter.
General Accounting Records	
6. General and subsidiary ledgers:	
(a) Ledgers:	
(1) General ledgers	10 years.
(2) Ledgers subsidiary or auxiliary to general ledgers except ledgers provided for elsewhere.	10 years.
(b) Indexes:	
(1) Indexes to general ledgers	10 years.
(2) Indexes to subsidiary ledgers except ledgers provided for elsewhere.	10 years.
(c) Trial balance sheets of general and subsidiary ledgers	2 years.
7. Journals: General and subsidiary	10 years.
8. Journal vouchers and journal entries including supporting detail:	
(a) Journal vouchers and journal entries	10 years.
(b) Analyses, summarizations, distributions, and other computations which support journal vouchers and journal entries:	
(1) Charging plant accounts	25 years.
(2) Charging all other accounts	6 years.
9. Cash books: General and subsidiary or auxiliary books	5 years after close of fiscal year.
10. Voucher registers: Voucher registers or similar records when used as a source document.	5 years.
11. Vouchers:	
(a) Paid and canceled vouchers (1 copy-analysis sheets showing detailed distribution of charges on individual vouchers and other supporting papers).	5 years.
(b) Original bills and invoices for materials, services, etc., paid by vouchers.	5 years.
(c) Paid checks and receipts for payments of specific vouchers	5 years.
(d) Authorization for the payment of specific vouchers	5 years.
(e) Lists of unaudited bills (accounts payable), list of vouchers transmitted, and memoranda regarding changes in audited bills.	Destroy at option.
(f) Voucher indexes	Destroy at option.
Insurance	
12. Insurance records:	
(a) Records of insurance policies in force, showing coverage, premiums paid, and expiration dates.	Destroy at option after expiration.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
(b) Records of amounts recovered from insurance companies in connection with losses and of claims against insurance companies, including reports of losses, and supporting papers.	6 years.
Operations and Maintenance	
13. Production—Gas:	
(a) Recording instrument charts such as pressure (static and/or differential), temperature, specific gravity, heating value, etc.	If the measurement data have not been disputed or adjusted, destroy after 1 year.
(b) Test of heating value at stations and outlying points	If the measurement data have not been disputed or adjusted, destroy after 1 year.
(c) Records of gas produced, out, and holder stock	If the measurement data have not been disputed or adjusted, destroy after 1 year.
(d) Analysis of (gas produced) B.T.U. and sulphur content	If the measurement data have not been disputed or adjusted, destroy after 1 year.
(e) Well records, including clearing, bailing, shooting etc., records; rock pressure; open flow; production, gas analysts' reports etc.	1 year after field or relevant production area abandoned
(f) Gas measuring records	If the measurement data have not been disputed or adjusted, destroy after 1 year.
14. Transmission and distribution—Gas:	
(a) Substation and transmission line log	If the measurement data have not been disputed or adjusted, destroy after 1 year.
(b) System operator's daily logs and reports of operation	If the measurement data have not been disputed or adjusted, destroy after 1 year.
(c) Gas measuring records	If the measurement data have not been disputed or adjusted, destroy after 1 year.
(d) Transmission line operating reports	If the measurement data have not been disputed or adjusted, destroy after 1 year.
(e) Compression operation and reports	If the measurement data have not been disputed or adjusted, destroy after 1 year.
(f) Recording instrument charts such as pressure (static and/or differential), temperature, specific heating value, etc.	If the measurement data have not been disputed or adjusted, destroy after 1 year.
14.1 Underground storage of natural gas:	
(a) Well records, reports, and logs which include data relating to pressures, injected volumes, withdrawn volumes, core analysis, daily volumes of gas injected into and withdrawn from reservoir, cushion, and working gas volumes for each reservoir.	1 year after reservoir, field, or relevant storage area is abandoned.
(b) Records containing information relating to reservoir gas leakage, showing the total gas leakage, and recycled gas.	1 year after reservoir, field, or relevant storage area is abandoned.
(c) Records on back pressure tests field data	1 year or until superseded.
(d) Records on back pressure test results, gas analysis	1 year or until superseded.
15. Maintenance work orders and job orders:	
(a) Authorizations for expenditures for maintenance work to be covered by work orders, including memoranda showing the estimates of costs to be incurred.	5 years.
(b) Work order sheets to which are posted in detail the entries for labor, material, and other charges in connection with maintenance, and other work pertaining to natural gas company operations.	5 years.
(c) Summaries of expenditures on maintenance and job orders and clearances to operating other accounts (exclusive of plant accounts).	5 years.
Plant and Depreciation	
16. Plant ledgers:	
(a) Ledgers of natural gas company's plant accounts including land and other detailed ledgers showing the cost of plant by class.	25 years.
(b) Continuing plant inventory ledger, book or card records showing description, location, quantities, cost, etc., of physical units (or items) of natural gas plant owned.	25 years.
17. Construction work in progress ledgers:	
(a) Construction work in progress ledgers	5 years after clearance to the plant account, provided continuing plant inventory records are maintained; otherwise 5 years after plant is retired.
(b) Work order sheets to which are posted in summary form or in detail the entries for labor, materials, and other charges for natural gas company's plant additions and the entries closing the work orders to plant in service at completion.	5 years after clearance to the plant account, provided continuing plant inventory records are maintained; otherwise 5 years after plant is retired.
(c) Authorizations for expenditures for additions to natural gas company plant, including memoranda showing the detailed estimates of cost, and the bases therefor (including original and revised or subsequent authorizations).	5 years after clearance to the plant account, provided continuing plant inventory records are maintained; otherwise 5 years after plant is retired.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
(d) Requisitions and registers of authorizations for natural gas company plant expenditures.	5 years after clearance to the plant account, provided continuing plant inventory records are maintained; otherwise 5 years after plant is retired.
(e) Completion or performance reports showing comparison between authorized estimates and actual expenditures for natural gas company plant additions.	5 years after clearance to the plant account, provided continuing plant inventory records are maintained; otherwise 5 years after plant is retired.
(f) Analysis or cost reports showing quantities of materials used, unit costs, number of man-hours etc., in connection with completed construction project.	5 years after clearance to the plant account, provided continuing plant inventory records are maintained; otherwise 5 years after plant is retired.
(g) Records and reports pertaining to progress of construction work, the order in which jobs are to be completed, and similar records which do not form a basis of entries to the accounts.	Destroy at option.
(h) Well-drilling logs and well construction records	1 year after field or well is abandoned.
18. Retirement work in progress ledgers, work orders, and supplemental records:	
(a) Work order sheets to which are posted the entries for removal costs, materials recovered, and credits to natural gas company plant accounts for cost of plant retirement.	5 years after plant is retired.
(b) Authorizations for retirement of natural gas company plant, including memoranda showing the basis for determination of cost of plant to be retired, and estimates of salvage and removal costs.	5 years after plant is retired.
(c) Registers of retirement work	5 years.
19. Summary sheets, distribution sheets, reports, statements, and papers directly supporting debits and credits to natural gas company plant accounts not covered by construction or retirement work orders and their supporting records.	5 years.
20. Appraisals and valuations:	
(a) Appraisals and valuations made by the company of its properties or investments or of the properties or investments of any associated companies. Includes all records essential thereto.	3 years after appraisal.
(b) Determinations of amounts by which properties or investments of the company or any of its associated companies will be either written up or written down as a result of:	
(1) Mergers or acquisitions	10 years after completion of transaction or as ordered by the Commission.
(2) Asset impairments	10 years after recognition of asset impairment.
(3) Other bases	10 years after the asset was written up or down.
21. The original or reproduction of engineering records, drawings, and other supporting data for proposed or as-constructed gas facilities: Maps, diagrams, profiles, photographs, field survey notes, plot plan, detail drawings, records of engineering studies, and similar records showing the location of proposed or as-constructed facilities.	Retained until retired or abandoned.
22. Contracts relating to natural gas plant:	
(a) Contracts relating to acquisition or sale of plant	6 years after plant is retired or sold.
(b) The primary records of gas acreage owned, leased or optioned excluding deeds and leases but including such records as lease sheets, leasehold cards, and option agreements.	6 years after plant is retired or sold.
23. Records pertaining to reclassification of natural gas plant accounts to conform to prescribed systems of accounts including supporting papers showing the bases for such reclassifications.	6 years.
24. Records of accumulated provisions for depreciation and depletion of gas plant and supporting computation of expense:	
(a) Detailed records or analysis sheets segregating the accumulated depreciation according to functional classification of plant.	25 years.
(b) Records reflecting the service life of property and the percentage of salvage and cost of removal for property retired from each account for depreciable natural gas plant.	25 years.
Purchases and Stores	
25. Procurement:	
(a) Agreements entered into for the acquisition of goods or the performance of services. Includes all forms of agreements not specifically set forth in Subsection 7 such as but not limited to: Letters of intent, exchange of correspondence, master agreements, term contracts, rental agreements, and the various types of purchase orders:	
(1) For goods or services relating to plant construction	6 years.
(2) For other goods or services	6 years.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
(b) Supporting documents including accepted and unaccepted bids or proposals (summaries of unaccepted bids or proposals may be kept in lieu of originals) evidencing all relevant elements of the procurement.	6 years.
26. Material ledgers: Ledger sheets of materials and supplies received, issued, and on hand.	6 years after the date records/ledgers were created.
27. Materials and supplies received and issued: Records showing the detailed distribution of materials and supplies issued during accounting periods.	6 years.
28. Records of sales of scrap and materials and supplies:	
(a) Authorization for sale of scrap and materials and supplies	3 years.
(b) Contracts for sale of scrap and materials and supplies	3 years.
Revenue Accounting and Collection	
29. Customers' service applications and contracts: Contracts, including amendments for extensions of service, for which contributions are made by customers and others.	4 years after expiration.
30. Rate schedules: General files of published rate sheets and schedules of natural gas company service (including schedules suspended or superseded).	6 years after published rate sheets and schedules are superseded or no longer used to charge for services.
31. Maximum demand, pressure, temperature, and specific gravity charts and demand meter record card.	If the measurement data have not been disputed or adjusted, destroy after 7 months.
32. Miscellaneous billing data: Billing department's copies of contracts with customers (other than contracts in general files).	Destroy at option.
33. Revenue summaries: Summaries of monthly operating revenues according to classes of service. Including summaries of forfeited discounts and penalties.	5 years.
Tax	
34. Tax records:	
(a) Copies of tax returns and supporting schedules filed with taxing authorities, supporting working papers, records of appeals of tax bills, and receipts for payment. See Subsection 11(b) for vouchers evidencing disbursements:	
(1) Income tax returns	2 years after final tax liability is determined.
(2) Property tax returns	2 years after final tax liability is determined.
(3) Sales and other use taxes	2 years.
(4) Other taxes	2 years after final tax liability is determined.
(5) Agreements between associate companies as to allocation of consolidated income taxes.	2 years after final tax liability is determined.
(6) Schedule of allocation of consolidated Federal income taxes among associate companies.	2 years after final tax liability is determined.
(b) Filings with taxing authorities to qualify employee benefit plans	5 years after discontinuance of plan.
(c) Information returns and reports to taxing authorities	3 years after final tax liability is determined.
Treasury	
35. Statements of funds and deposits:	
(a) Statements of periodic deposits with fund administrators or trustees.	Retain records for the most recent 3 years.
(b) Statements of periodic withdrawals from fund	Retain records for the most recent 3 years.
(c) Statements prepared by fund administrator or trustees of fund activity including:	Retain records until the fund is dissolved or terminated.
(1) Beginning of the year fund balance	
(2) Deposits with the fund;	
(3) Acquisition of investments held by the fund;	
(4) Disposition of investments held by the fund;	
(5) Disbursements from the fund, including party to whom disbursement was made; and,	
(6) End of year fund balance.	
36. Records of deposits with banks and others:	
(a) Statements from depositories showing the details of funds received, disbursed, transferred, and balances on deposit.	Destroy at option after completion of audit by independent accountants.
(b) Check stubs, registers, or other records of checks issued	3 years.
37. Records of receipts and disbursements:	
(a) Daily or other periodic statements of fund receipts or disbursements.	Destroy at option after completion of annual audit by independent accountants.
(b) Records or periodic statements of outstanding vouchers, checks, drafts, etc., issued and not presented.	Destroy at option after completion of annual audit by independent accountants.
(c) Reports of associates showing working fund transactions and summaries thereof.	Destroy at option after completion of annual audit by independent accountants.
(d) Reports of revenue collections by field cashiers, pay stations, etc.	Destroy at option after completion of annual audit by independent accountants.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
Miscellaneous	
38. Statistics: Financial, operating, and statistical reports used for internal administrative or operating purposes.	5 years.
39. Budgets and other forecasts (prepared for internal administrative or operating purposes) of estimated future income, receipts, and expenditures in connection with financing, construction and operations, including acquisitions and disposals of properties or investments.	3 years.
40. Records of predecessor companies	Retain consistent with the requirements for the same types of records of the natural gas company.
41. Reports to Federal and State regulatory commissions including annual financial, operating, and statistical reports.	5 years.
42. Advertising: Copies of advertisements by or for the company on behalf of itself or any associate company in newspapers, magazines, and other publications, including costs and other records relevant thereto (excluding advertising of appliances, employment opportunities, routine notices, and invitations for bids all of which may be destroyed at option).	2 years.

9. Part 356 is revised to read as follows:

PART 356—PRESERVATION OF RECORDS FOR OIL PIPELINE COMPANIES

- Sec.
- 356.1 Promulgation
- 356.2 General instructions.
- 356.3 Preservation of records for oil pipeline companies

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 1–27; E.O. 12009, 3 CFR 1978 Comp. p. 142.

§ 356.1 Promulgation.

This part is prescribed and promulgated as the regulations governing the preservation of records by oil pipeline companies subject to the jurisdiction of the Commission, to the extent and in the manner set forth therein. This part is enforceable as of the date the oil pipeline company becomes subject to the jurisdiction of the Commission.

§ 356.2 General instructions.

- (a) *Scope of this part.* (1) The regulations in this part apply to all books of account and other records prepared by or on behalf of the oil pipeline companies.
- (2) The regulations in this part must not be construed as excusing compliance with other lawful requirements of any other governmental body, Federal or State, prescribing other record keeping requirements or for preservation of records longer than those prescribed in this part.
- (3) To the extent that any Commission regulations may provide for a different retention period, the records should be retained for the longer of the retention periods.
- (4) Unless otherwise specified in the schedule in § 356.3, duplicate copies of

- records may be destroyed at any time. Provided, however, that such duplicate copies must not contain significant information not shown on the originals.
- (5) Records other than those listed in the schedule may be destroyed at the option of the oil pipeline company. Provided, however, that records which are used in lieu of those listed must be preserved for the periods prescribed for the records used for substantially similar purposes and that retention of records pertaining to added services, functions, plant, etc., the establishment of which cannot be presently foreseen, must conform to the principles embodied herein.
- (6) Notwithstanding the provision of the records retention schedule, the Commission may, upon request of the oil pipeline company, authorize shorter retention periods for any records listed in § 356.3. The oil pipeline companies must show that the longer retention periods are no longer necessary or appropriate to protect the public interest, investors, or consumers. A waiver from any provision of these regulations may be made by the Commission upon its own initiative or upon submission of a written request by the company. Each request for waiver must demonstrate that unusual circumstances warrant a departure from prescribed retention periods, procedures, or techniques, or that compliance with such prescribed requirements would impose an unreasonable burden on the company.
- (b) *Designation of supervisory official.* Each oil pipeline company subject to the provision of this part must designate one or more persons to supervise the oil pipeline company's program for preservation and authorized destruction of records.

- (c) *Protection and storage of records.* Each oil pipeline company subject to these regulations must provide reasonable protection for records. The records must have protections from fire, floods, and other hazards. Storage spaces, will also prevent unnecessary exposure to deterioration from excessive humidity, dryness, or lack of proper ventilation.
- (d) *Record storage media.* (1) Each oil pipeline company has the flexibility to select its own storage media.
- (2) The storage media must have a life expectancy at least equal to the applicable record retention period provided in § 356.3 unless there is a quality transfer from one media to another with no loss of data.
- (3) Each oil pipeline company is required to implement internal control procedures that assure the reliability of and ready access to data stored on machine readable media. Internal control procedures must be documented by a responsible supervisory official.
- (e) *Destruction of records.* Oil pipeline companies may use any appropriate method to destroy permitted records.
- (f) *Premature destruction or loss of records.* When records are destroyed or lost before the expiration of the prescribed period of retention, a certified statement listing, as far as may be determined, the records destroyed, and describing the circumstances of accidental or other premature destruction or loss must be filed with the Commission within ninety (90) days from the date of discovery of such destruction.
- (g) *Retention periods designated "Destroy at option".* "Destroy at option" constitutes authorization for destruction of records at managements' discretion if it does not conflict with other legal

retention requirements or usefulness of such records in satisfying pending regulatory action or directives.

(h) *Records of services performed by associated companies.* Oil pipeline companies must assure the availability of records of services performed by associated companies for the periods indicated in § 356.3 as necessary to be able to readily furnish detailed information as to the nature of transaction, the involved, and the accounts used to record the transactions.

(i) *Index of records.* Oil pipeline companies must arrange, file, and index records so they may be readily identified and made available to Commission representatives.

(j) *Rate case.* The schedule of records in § 356.3 shows the periods of time that designated records must be preserved. However, notwithstanding the minimum retention periods provided in this regulation, if an oil pipeline company intends to reflect costs in a current, pending, or future rate case, or if an oil pipeline company has abandoned or retired plant subsequent to the test period of its last rate case, it must retain the appropriate records to support the costs, and adjustments proposed in the next or current rate case.

(k) *Pending complaint litigation or governmental proceeding.* Notwithstanding the minimum

requirements, if an oil pipeline company is involved in pending litigation, complaint proceedings, proceedings remanded by the court, or governmental proceedings, it must retain all relevant records.

(l) *Companies going out of business.* The records referred to in these regulations may be destroyed after business is discontinued and the company is completely liquidated. The records may not be destroyed until dissolution is final and all transactions are completed. When a company is merged with another company under jurisdiction of the Commission, the successor company must preserve records of the merged company in accordance with these regulations.

(m) *Life or mortality study data.* Life or mortality study data for depreciation purposes must be retained for 25 years or for 10 years after plant is retired.

§ 356.3 Preservation of records for oil pipeline companies.

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7. Ledgers.
8. Journals.
9. Vouchers.
10. Accounts receivable.
11. Records of accounting codes and instructions.

Property and Equipment

12. Property records.
13. Engineering records.

Personnel and Payroll

14. Payroll records.
15. Copies of tax returns and supporting schedules.
16. Information returns, and reports to taxing authorities.

Purchase and Stores

17. Material ledger.
18. Inventories.

Transportation

19. Oil and other products stocks.

Tariffs and Rates

20. Official file copies of tariffs.
21. Authorities and supporting papers for transportation.
22. Copies of concurrences and powers of attorney.
23. Correspondence and working papers in connection with the making of rates.

Reports and Statistics

24. Reports to Federal Energy Regulatory Commission and other regulatory bodies.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION

Item No. and description	Retention period
Corporate and General	
1. Incorporation and reorganization:	
(a) Charter of certificate of incorporation and amendments	Permanently or at termination of the corporation's existence.
(b) Legal documents related to mergers, consolidations, reorganizations, receiverships, and similar actions which affect the identity or organization of the company.	Permanently or at termination of the corporation's existence.
2. Minutes to Directors', Executive Committees', Stockholders', and other corporate meetings.	5 years.
3. Titles, franchises, and authorities:	
(a) Certificates of public convenience and necessity issued by regulating bodies.	Until expiration or cancellation.
(b) Operating authorizations and exemptions to operate issued by regulating bodies.	Until expiration or cancellation.
(c) Copies of formal orders of regulatory bodies served upon the company.	1 year after expiration or cancellation.
(d) Deeds, charters, and other title papers	3 years after disposition of property.
4. Contracts and agreements:	
(a) Contracts and related papers for transactions which are subject to the provisions of the Clayton Antitrust Act (15 U.S.C. 20).	4 years after expiration, provided there is no pending litigation or governmental inquiry or proceeding involved.
(b) Service contracts, such as for operational management, accounting, financial or legal service, and agreements with agents.	3 years after expiration or termination.
(c) Contracts and other agreements relating to the construction, acquisition or sale of real property and equipment except as otherwise provided in paragraph (a) of this item.	3 years after expiration or termination.
5. Accountant's, auditor's, and inspector's reports:	
(a) Certifications and reports of examinations and audits conducted by public and certified public accountants.	3 years.
(b) Reports of examinations and audits conducted by internal auditors, time inspectors, weight inspectors, and others.	3 years.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
Treasury	
6. Long-term debt records: (a) Bond indentures, underwriting, mortgage, and other long-term credit agreements.	6 years after redemption.
Financial Accounting	
7. Ledgers: (a) General and subsidiary ledgers with indexes thereto	3 years.
(b) Balance sheets and trial balance sheets of general and subsidiary ledgers.	3 years.
8. Journals: (a) General journals	3 years.
(b) Subsidiary journals and any supporting data, except as otherwise provided for, necessary to explain journal entries.	3 years.
(c) Schedules of recurring or standard journal entries with entry identifications.	Until superseded.
9. Vouchers: (a) Voucher registers or equivalent	5 years.
(b) Paid and canceled vouchers, expenditure authorizations, detailed distribution sheets, and other supporting data including original bills and invoices, except as otherwise provided herein.	5 years.
10. Accounts receivable, record, or register of accounts receivable	3 years after settlement.
11. Records of accounting codes and instructions	3 years after discontinuance.
Property and Equipment	
12. Property records: (a) Records which maintain complete information on cost or other value of all real property or equipment.	3 years after disposition of property.
(b) Records and additions and betterments made to property and equipment.	3 years after disposition of property.
(c) Records pertaining to retirements and replacements of property and equipment.	3 years after disposition of property.
(d) Records pertaining to depreciation: (1) When group method and depreciation rates are prescribed by the Commission.	3 years after disposition of property.
(2) Other	3 years after disposition of property.
(e) Records of equipment number changes	3 years after disposition of property.
(f) Records of motor and engine changes	Destroy at option.
(g) Files of detailed authorizations for expenditures, work or job orders showing estimated costs of additions and betterments, extensions, replacements, major repairs and dismantlements, approved by proper officials, together with supporting data.	3 years after disposition of property.
(h) Periodical inventories of property and equipment	3 years after prior inventory.
13. Engineering records: (a) Plans and specifications	3 years after the disposition of the property.
(b) Estimates of work, engineering studies, construction bids, and similar data pertaining to property changes actually made.	15 years.
Personnel and Payroll	
14. Payroll records: (a) Registers, abstracts, or summaries showing earnings, deductions, and amounts paid to each employee by pay periods.	3 years.
(b) Records showing the detailed distribution of salaries and wages to various accounts.	3 years.
Taxes	
15. Copies of tax returns and supporting schedules filed with taxing authorities, supporting working papers, records of appeals of tax bills, and receipts for payment. See Subsection 9(b) for vouchers evidencing disbursements: (a) Income tax returns	3 years after final tax liability is determined.
(b) Property tax returns	3 years after final tax liability is determined.
(c) Sales and other use taxes	3 years final tax liability is determined.
(d) Other taxes	3 years after final tax liability is determined.
(e) Agreements between associate companies as to allocation of consolidated income taxes.	3 years after final tax liability is determined.
(f) Schedule of allocation of consolidated Federal income taxes among associate companies.	3 years after final tax liability is determined.
16. Information returns and reports to taxing authorities	3 years, or for the period of any extensions granted for audits.
Purchase and Stores	
17. Material ledger, records of material and supplies on hand at all locations.	2 years.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
18. Inventories: General Inventories of material and supplies on hand, with record of adjustments between accounts required to bring stores records into agreement with physical inventories.	2 years.
Transportation	
19. Oil and other products stocks and movement pipelines only:	
(a) Records and receipts, deliveries, pumpings, stocks, and over and short.	3 years.
(b) Run tickets showing quantities by tank measurement of meter reading of oil and other products received into the delivered from company's lines.	3 years.
(c) Statements of oil and oil products consumed as fuel including quantity value, and where consumed.	3 years.
(d) Statement of oil and other products lost by line breaks and leaks including quantity, value, and location of breaks and leaks.	3 years.
(e) Reports of power furnished by producers: monthly reports of the quantity of oil run in connection with which power was furnished by producers, and records of payment for such power.	3 years.
(f) Records of producers' property identifying ownership and location for producers' tanks or wells to which carrier's lines are connected.	3 years after disconnection.
(g) Division or other periodical inventory reports of oil and other products on hand.	3 years.
(h) Division orders: Directions received by carrier as to the division of interest and to whose account transported oil should be credited.	3 years after discontinuance.
(i) Directions received by the carrier for the transfer of division order interests from one interest owner to another.	3 years after discontinuance.
(j) Transfer orders for the transfer of ownership of oil or other products in carrier's custody.	3 years.
Tariffs and Rates	
20. Official file copies of tariffs, classifications, division sheets, and circulars relative to the transportation of property.	3 years after expiration or cancelation.
21. Authorities and supporting papers for transportation of property for free or at reduced rates.	3 years.
22. Copies of concurrences and powers of attorney	2 years after expiration or cancelation.
23. Correspondence and working papers in connection with the making of rates and compliance of tariffs, classifications, division sheets, and circulars affecting the transportation of property.	2 years after cancelation of tariff.
Reports and Statistics	
24. Reports to Federal Energy Regulatory Commission and other regulatory bodies, annual financial, operating and statistical reports, file copies, and supporting data.	5 years.

[FR Doc. 00-19505 Filed 8-4-00; 8:45 am]
 BILLING CODE 6717-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

[DoD Reg. 5400.11.R]

Privacy Act; Implementation

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule, with comments.

SUMMARY: As directed by Secretary of Defense memorandum dated May 25, 2000, the Department of Defense Privacy Program is being amended to include specific language for providing periodic Privacy Act training for DoD personnel who may be expected to deal with the news media or the public.

DATES: This rule is effective May 25, 2000. Comments must be received by October 6, 2000.

ADDRESSES: Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202-4502.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr., at (703) 607-2943.

SUPPLEMENTARY INFORMATION: **Executive Order 12866.** It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of \$100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of

recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act. It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

List of Subjects in 32 CFR Part 310

Privacy.

1. The authority citation for 32 CFR part 310 continues to read as follows:

Authority: Pub. L. 93?579, 88 Stat. 1896 (5 U.S.C. 552a).

2. § 310.72, paragraph (a)(2) is revised to read as follows:

§ 310.72 DoD training programs.

(a) * * *

(2) Specialized training. Training that provides information as to the application of specific provisions of this part to specialized areas of job performance. Personnel of particular concern include, but are not limited to personnel specialists, finance officers, DoD personnel who may be expected to deal with the news media or the public, special investigators, paperwork managers, and other specialists (reports, forms, records, and related functions), computer systems development personnel, computer systems operations personnel, statisticians dealing with personal data and program evaluations, and anyone responsible for implementing or carrying out functions under this part. Specialized training should be provided on a periodic basis.

* * * * *

Dated: July 31, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 00-19861 Filed 8-4-00; 8:45 am]

BILLING CODE 5001-10-F

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

[Secretary of the Navy Instruction 5211.5]

Privacy Act; Implementation

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is adding an exemption rule for a Privacy Act system of records. The exemption is intended to increase the value of the system of records for law enforcement purposes, to comply with prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the system of records.

EFFECTIVE DATE: July 18, 2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685-6545 or DSN 325-6545.

SUPPLEMENTARY INFORMATION: The proposed rule was published on May 18, 2000, at 65 FR 31505. No comments were received, therefore, the Department of the Navy is adopting this rule as final.

Executive Order 12866. It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of \$100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act. It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

List of Subjects in 32 CFR Part 701

Privacy.

1. The authority citation for 32 CFR part 701, subpart G continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 701.118, is amended by adding paragraph (u) as follows:

§ 701.118 Exemptions for specific Navy record systems.

* * * * *

(u) System identifier and name: N05813-4, Trial/Government Counsel Files.

(i) Exemption. Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws. Portions of this system of records that may be exempt pursuant to subsection 5 U.S.C.

552a(j)(2) are (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(5), (e)(4)(G), (H), and (I), (e)(8), (f), and (g).

(ii) Exemption. Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1-R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(iii) Exemption. Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source. Portions of this system of records that may be exempt pursuant to subsections 5 U.S.C. 552a(k)(1) and (k)(2) are (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(iv) Authority: 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2).

(v) Reason: (1) From subsection (c)(3) because release of accounting of disclosure could place the subject of an investigation on notice that he/she is under investigation and provide him/her with significant information concerning the nature of the investigation, resulting in a serious impediment to law enforcement investigations.

(2) From subsections (c)(4), (d), (e)(4)(G), and (e)(4)(H) because granting individuals access to information collected and maintained for purposes relating to the enforcement of laws could interfere with proper investigations and orderly administration of justice. Granting individuals access to information relating to the preparation and conduct of criminal prosecution would impair the development and implementation of legal strategy. Amendment is inappropriate because the trial/government counsel files contain official records including transcripts, court orders, and investigatory materials such as exhibits, decisional memorandum and other case-related papers. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges; and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffective investigation techniques, sources, and methods used by law enforcement personnel, and

could result in the invasion of privacy of individuals only incidentally related to an investigation.

(3) From subsection (e)(1) because it is not always possible in all instances to determine relevancy or necessity of specific information in the early stages of case development. Information collected during criminal investigations and prosecutions and not used during the subject case is often retained to provide leads in other cases.

(4) From subsection (e)(2) because in criminal or other law enforcement investigations, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of an investigation, presenting a serious impediment to law enforcement investigations.

(5) From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(6) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(7) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(8) From subsection (e)(8) because compliance would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures, or evidence.

(9) From subsection (f) and (g) because this record system is exempt from the individual access provisions of subsection (d).

(10) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Navy will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Navy's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

* * * * *

Dated: July 31, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 00-19859 Filed 8-4-00; 8:45 am]

BILLING CODE 5001-10-F

POSTAL SERVICE

39 CFR Part 20

Express Mail International Service

AGENCY: Postal Service.

ACTION: Interim rule.

SUMMARY: Pursuant to its authority under 39 U.S.C. 407, the Postal Service will offer a 5 percent discount off of regular postage for all Express Mail International Service (EMS) shipments paid for by an Express Mail Corporate Account (EMCA) or made by federal agencies using the federal financial system. The discount would apply only to the basic postage portion of EMS published rates. It would not apply to pick-up service charges, additional merchandise insurance coverage fees, or shipments made under an International Customized Mail agreement.

DATES: Effective: August 12, 2000. Comments on the interim rule must be received on or before September 6, 2000.

ADDRESSES: Written comments should be sent to the Manager, International Products, International Business, U.S.

Postal Service, 475 L'Enfant Plaza SW, Room 370-IBU, Washington DC 20260-6500. Copies of all written comments will be available for public inspection between 9 a.m. and 4 p.m., Monday through Friday, in International Business, 10th Floor, 901 D Street SW, Washington DC 20260-6500.

FOR FURTHER INFORMATION CONTACT:

Angus MacInnes, (202) 268-2268.

SUPPLEMENTARY INFORMATION: The Postal Service is changing conditions for certain mailing categories to automatically reduce every payment transaction by 5 percent for all EMS purchased at basic published prices and paid through an EMCA.

An EMCA is an advance deposit account developed for Express Mail, which enables customers to deposit funds with the Postal Service for payment of anticipated future Express Mail mailings. Express Mail Corporate Accounts can be used for domestic and international Express Mail. The discount will be available only for Express Mail sent internationally. Federal agencies will also be eligible for the discount. The discount will be deducted from the total postage amount on the mailer's monthly account rather than from each piece.

The 5 percent discount will be offered on postage only; it does not apply to pickup fees, any special fees, nor postage for shipments being made under an International Customized Mail agreement.

As required under the Postal Reorganization Act, these changes will result in conditions of mailing that do not apportion the costs of the service, so the overall value of the service to users is fair and reasonable, and not unduly or unreasonably discriminatory or preferential.

List of Subjects in 39 CFR Part 20

Foreign relations, international postal services.

PART 20—[AMENDED]

1. The authority citation for 39 CFR Part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Amend the International Mail Manual by revising section 2 to read as follows:

2 CONDITIONS FOR MAILING

210 Express Mail International Service

* * * * *

212 Postage**212.1 Rates****212.11 Country Rates**

See the Individual Country Listings for countries that offer Express Mail International Service.

212.12 Express Mail Corporate Account Discount Rates

Express Mail International Service (EMS) rates will be reduced by 5 percent for all payments made through an Express Mail Corporate Account (EMCA) or through the federal agency payment system. The discount applies only to the postage portion of EMS rates. It does not apply to pickup service charges (212.24), additional merchandise insurance coverage fees (211.51), or shipments made under an International Customized Mail agreement.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00-19393 Filed 8-4-00; 8:45 am]

BILLING CODE 7710-12-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 300**

[FRL-6844-7]

National Oil and Hazardous Substances, Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final deletion of the Superfund Site from the National Priorities List (NPL).

SUMMARY: EPA Region 5 announces the deletion of the Windom Municipal Landfill Site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substance Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (CERCLA). EPA and the Minnesota Pollution Control Agency (MPCA) have determined that the Site poses no significant threat to public health or the environment and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: This "direct final" action will be effective October 6, 2000 unless EPA

receives dissenting comments by September 6, 2000. If written dissenting comments are received, EPA will publish a timely withdrawal of the rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, U.S. Environmental Protection Agency, Superfund Division, U.S. EPA, Region 5, 77 W. Jackson Blvd., (SR-6J), Chicago, IL 60604. Requests for comprehensive information on this Site is available through the public docket which is available for viewing at the Site Information Repositories at the following locations: U.S. EPA Region 5, Administrative Records, 77 W. Jackson Blvd., Chicago, IL 60604, 312-886-0900; and The Minnesota Pollution Control Agency, 520 Lafayette Road North, Saint Paul, Minnesota 55155-4184.

FOR FURTHER INFORMATION CONTACT:

Gladys Beard (SR-6J), U.S. Environmental Protection Agency, 77 W. Jackson, Chicago, IL, (312) 886-7253, FAX (312) 886-7253, e-mail beard.gladys@epa.gov

SUPPLEMENTARY INFORMATION:**Table of Contents**

- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis of Intended Site Deletion
- V. Action

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region 5 announces the deletion of the Windom Municipal Landfill Site, Windom, Cottonwood County, Minnesota, from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. EPA and the State of Minnesota have determined that the remedial action for the Site has been successfully executed. EPA will accept comments on this action thirty days after publication of this action in the **Federal Register**.

Section II of this action explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the history of the Windom Site and explains how the Site meets the deletion criteria. Section V states EPA's action to delete the Site from the NPL unless dissenting comments are received during the comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that Sites may be deleted from, or reclassified on the NPL where no further response is appropriate. In making a determination to delete a Site from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria has been met:

- (i) Responsible parties or other persons have implemented all appropriate response actions required;
- (ii) All appropriate Fund-financed response under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or
- (iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Even if the Site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the Site will be conducted at least every five years after the initiation of the remedial action at the Site to ensure that the Site remains protective of public health and the environment. In the case of this Site, EPA conducted a Five-Year Review in February 1995 and a second one in December 1999. Based on these reviews, EPA determined that conditions at the Site remain protective of public health and the environment. As explained below, the Site meets the NCP's deletion criteria listed above. If new information become available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without the application of the Hazard Ranking System (HRS).

III. Deletion Procedures

The following procedures were used for the intended deletion of the Site:

- (1) All appropriate response under CERCLA have been implemented and no further action by EPA is appropriate;
- (2) The Minnesota Pollution Control Agency concurred with the proposed deletion decision;
- (3) A notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day dissenting public comment period on EPA's Direct Final Action to Delete; and,
- (4) All relevant documents have been made available for public review in the local

Site information repositories. EPA is requesting only dissenting comments on the Direct Final Action to Delete.

For deletion of the Site, EPA's Regional Office will accept and evaluate public comments on EPA's Final Notice before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary, responding to each significant comment submitted during the public comment period. Deletion of the Site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in Section II of this document, § 300.425(e)(3) of the NCP states that the deletion of a Site from the NPL does not preclude eligibility for future response actions.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the proposal to delete this Site from the NPL.

Site Background and History

The City operated a municipal landfill from the 1930's to 1974. The Site covers approximately 11.4 acres and accepted municipal refuse, and manufacturing waste including paint sludges, from the Toro Company. Concern about the proximity of the Site to the City's municipal well field prompted the MPCA to evaluate the potential of the landfill to impact the wells. Analysis of the groundwater consistently revealed volatile organic compounds downgradient of the landfill. The Site was listed on the National Priorities List in April 1986. On June 24, 1986, the MPCA issued a Request for Response Action (RFRA) to the City and the Toro Company, which required them to conduct a Remedial Investigation (RI), and Feasibility Study (FS), and to prepare a Response Action Plan (RAP).

The City conducted the RI to determine the extent and magnitude of contamination in 1987, and followed that with a Feasibility Study in 1988. The City submitted the RAP in January 1989, which was revised in March 1989, and subsequently, approved by the MPCA. The RAP included the following response action objectives:

- Protect the municipal water supply;
- Minimize leachate generation; and
- Control contaminant migration.

The EPA Region V Administrator concurred with the MPCA Record of Decision (ROD) and the selected remedy for the Site on September 29, 1989. The major components of the selected remedial action included: (i) protection of the municipal water supply through modifications to the existing water

plant; (ii) minimization of leachate generated by grading and capping of the Site; and (iii) monitoring of groundwater quality with a contingency plan to be implemented if significant groundwater impacts are detected at the Site perimeter.

The groundwater at the Site is located in glacial outwash deposited from the Des Moines lobe during the Wisconsin glaciation. The glacial outwash is underlain by a thick, low permeability clay layer, which serves as a natural barrier to water flow and protects deeper aquifers from contamination. Depth to the water table is about 50 feet the ground surface. The saturated thickness of the sand and gravel deposit ranges from 50 to 150 feet. The direction of groundwater flow is generally to the southwest toward the Des Moines River, but can be locally affected by extended pumping from the municipal system.

Water quality monitoring in the early 1980s revealed that chlorinated volatile compounds (VOCs) were detected near the fill area, most notably 1,1,2,2-tetrachloroethene (PCE), 1,1,2-trichloroethene (TCE), cis-1,2-dichloroethene (DCE), and vinyl chloride (VC). As a result of active groundwater pumping and treatment and natural attenuation, contaminant concentrations have declined to the point that DCE and VC have become the only compounds detected consistently at the landfill since 1996. There have been no quantified detections of VC since April 1998. In fact there have been no quantified detections of any VOC compound analyzed at the Site since July 1998.

Various inorganics historically have been detected slightly above background levels. A notable exception is nitrate, which was detected at a level of 15 milligrams per liter (mg/l) at MW1. Inorganics were dropped from the monitoring program in 1997. Two consecutive years of inorganic data indicated levels below the action levels, including MW1 where the nitrate concentration dropped to 0.1 mg/l.

The City well field is located northwest of the Site. City Well 7 is the closest well to the Site, and is approximately 500 feet northwest of the Site. City Well 7 was impacted with VOC concentrations, most notably VC as high as 26 micrograms per liter (ug/l) in April 1990. As a result, City Well 7 was removed from the municipal supply system. City Well 7 was used as a groundwater recovery well and connected to the spray treatment system at the landfill. City Well 7 operated as a recovery well until August of 1994. City Well 7 remains disconnected from the public water supply and monitoring

shows there have been no detections of vinyl chloride since July 1993.

To protect the water supply, the filter units at the municipal water treatment plant were modified in September 1988. The purpose of the modifications was to enhance aeration of raw water and hence, remove low levels of VOCs. Modifications of the filter unit involved installation of: (1) a series of pressure spray nozzles on the header distribution pipe to the filter; and (2) power roof ventilators with mist eliminators in the filter venting system. These modifications break the raw water into fine droplets when sprayed onto the gravity filter and increase airflow through the existing vents.

The City constructed a new water treatment plant in 1997. The first step in the new water treatment plant process is aeration. The primary purpose of the aerator is to enhance oxidation of iron and manganese but this aerator also has the dual purpose of volatilizing any VOCs. The aerator is comprised of numerous slotted trays through which a forced draft fan blows to aerate the water much like a stripping tower. After the aerator, the water flows to an open detention tank and filter basins that provide additional opportunities for volatilization.

Construction of the landfill cap began on June 1, 1989. The landfill surface was graded to obtain a minimum slope of 2 percent and a maximum slope of 25 percent. After grading, the landfill was covered with two layers of low-permeability material compacted in six-inch lifts. A six inch granular buffer was placed on the low-permeability material layer which, in turn, was covered by a layer of topsoil. Vegetation was established on the final cover. A gas venting system was also installed upon completion of the cap. The cap has been regularly inspected and maintenance performed as required. Maintenance has included mowing the vegetation, repairing minor erosion as necessary, and pocket gopher control.

The ROD called for initial periodic monitoring of groundwater with subsequent implementation of a contingency plan for contaminant migration control if established water quality limits were exceeded. The contingency action specified in the FS, and adopted in the ROD was a groundwater pump-out treatment system to control and treat the VOCs in the groundwater. When monitoring of City Well 7 and monitoring well MW-9C detected concentrations of vinyl chloride above the action level, initiation of groundwater remedial activities were triggered in accordance with the RAP.

A groundwater recovery well (RWA) was installed along the western property boundary in September 1989. An aquifer test, coupled with a pilot treatment test, was conducted in October 1989. The tests showed that spray treatment of groundwater at the Site was effective in removing VOCs from recovered groundwater and the spray treatment process did not pose a significant health threat.

Following approval of the final design, Recovery Wells B and C (RW-B and RW-C) were completed on October 24, 1990. On October 31, 1990, the final recovery system began operation. This system consisted of Wells RW-A and RW-C, and City Well 7 discharging through two spray guns to the main spray treatment area, and RW-B pumping to spray area B. This system operated continuously in this configuration, except for brief period of downtime for operation and maintenance, until August 1, 1994, when City Well 7 was removed from the treatment system. City Well 7 was removed from the recovery system because it had not had a detection of vinyl chloride since April 1993.

The system operated with the RW-B and RW-C configuration from August 1994 until April 9, 1998. RW-C was removed from the groundwater extraction system for the following reasons: it was always a clean well (except for a few one time unconfirmed VOC detections); landfill capture was able to be maintained without it; and it would change the groundwater flow stagnation points between recovery wells, thus enhancing cleanup. The system has operated with RW-A and RW-B since April 9, 1998.

Each of the remedial objectives specified in the ROD has been accomplished. The City water supply has been protected through modifications to the former water treatment plant along with the construction of the new water treatment plant. The landfill capping has effectively reduced infiltration thereby reducing the risk of further groundwater impacts. The groundwater recovery and treatment system has effectively contained the VOC-impacted groundwater on-site and the treatment has now reduced all concentrations to below the laboratory detection limits.

This site meets all the site completion requirements as specified in OSWER Directive 9320.2-3C, Procedures for Completion and Deletion of National Priorities List Sites and Update. In addition, the Safe Drinking Water Act (SDWA) (40 CFR Parts 141-146) establishes federal Maximum Contaminant Levels (MCLs) for public

drinking water supplies. The MCL for vinyl chloride is 2.0 ug/l. Since there are non-detectable levels of vinyl chloride in each city well and the distribution system, the municipal water supply is in compliance with the SDWA and the established MCL for vinyl chloride.

Monitoring of the landfill monitoring wells and city wells will continue on a semi-annual basis to maintain protection of the city water supply. MPCA will maintain project oversight reviewing data submitted and approving the monitoring plans.

The City employees perform a monthly inspection of the Site as part of their routine monitoring. The inspections include an evaluation of soil erosion, settlement, vegetative cover maintenance, groundwater monitoring wells, and site security. Two times a year, typically April and October, a similar but more comprehensive inspection is performed by the PRPs.

The City of Windom, submitted a Five-Year Review and 1998-1999 Annual Evaluation Report to the MPCA in June 1999. This Five Year Review concluded that all remedial action objectives had been met and recommended that the groundwater extraction system be shut down and the site delisted from the NPL and the Minnesota Permanent List of Priorities (PLP). The MPCA concurred and the system was shut down on September 21, 1999. The Site was delisted from the PLP on February 2, 2000. A contingency plan is in place to reactivate the system if MCLs are exceeded in any monitoring well or municipal well. Semi-annual groundwater monitoring will continue until the next Five-Year Review, which is scheduled for June 2004. At that time, the MPCA will determine if groundwater monitoring will continue.

V. Action

The remedy selected for this Site has been implemented in accordance with the Records of Decision. The remedy has resulted in the significant reduction of the long-term potential for release of contaminants, therefore, threats to human health and the environment have been minimized. EPA and the State of Minnesota find that the remedy implemented continues to provide adequate protection of human health the environment.

The MPCA concurs with the EPA that the criteria for deletion of the Site have been met. Therefore, EPA is deleting the Site from the NPL.

This action will be effective October 6, 2000. However, if EPA receives dissenting comments by September 6,

2000, EPA will publish a document that withdraws this action.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous Waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 21, 2000.

William E. Muno,

Acting Regional Administrator, EPA, Region 5.

Part 300, title 40 of chapter 1 of the Code of Federal Regulations is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321 (c)(2); 42 U.S.C. 9601-9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p.193.

Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended by removing the site for "Windom Dump, Windom, Minnesota." [FR Doc. 00-19786 Filed 8-4-00; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 74, 78, and 101

[ET Docket No. 95-18; FCC 00-233]

Allocation of Spectrum at 2 GHz for Use by the Mobile-Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document confirms the Commission's decision to require new Mobile-Satellite Service (MSS) licensees in the reallocated 1990-2025 MHz and 2165-2200 MHz bands to bear the cost of relocating Broadcast Auxiliary Service (BAS, including the Cable Television Relay Service and the Local Television Transmission Service) licensees in the 1990-2110 MHz band, and Fixed Service (FS) microwave licensees from the 2165-2200 MHz bands in cases where sharing between MSS and FS is not possible. The Commission also declines a request for mandatory submission of information by incumbent BAS and FS licensees, and dismisses a petition requesting a freeze on new BAS licenses.

DATES: Effective September 6, 2000.

FOR FURTHER INFORMATION CONTACT: Sean White, Office of Engineering and Technology, 202/418-2453, swhite@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order and Second Memorandum Opinion and Order*, adopted June 27, 2000, and released July 3, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY-A257, 445 12th Street, S.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857-3800, 1231 20th Street, N.W. Washington, D.C. 20036.

Summary of the Second Report and Order and Second Memorandum Opinion and Order

1. In this *Second Report and Order and Second Memorandum Opinion and Order*, the Commission confirms its decision to require new Mobile-Satellite Service (MSS) licensees in the 1990-2025 MHz and 2165-2200 MHz bands to relocate incumbent BAS and FS licensees with which they are unable to share spectrum. In the March 1997 *First Report and Order and Further Notice of Proposed Rule Making* in ETN Docket No. 95-18, 62 FR 19509, April 22, 1997, we allocated the 1990-2025 MHz and 2165-2200 MHz bands to the Mobile-Satellite Service (MSS).

2. In response to a *Petition for Further Limited Consideration* filed by ICO, Ltd., we reaffirm our decision in the *First Report and Order and Further Notice of Proposed Rule Making*, that new MSS licensees in the 1990-2025 MHz and 2165-2200 MHz band will be required to relocate incumbent licensees in those bands, at the expense of the MSS licensees. This decision is consistent with the policy we established in the *First Report and Order and Further Notice of Proposed Rule Making*, ET Docket No. 92-9, 58 FR 46457, September 2, 1993; and proposed throughout that proceeding. ICO presented no new arguments justifying a change to this policy.

3. In response to a *Petition for Expedited Reconsideration* filed by the ICO U.S.A. Service Group (IUSG), we decline to change our decision, made in the *Third Notice of Proposed Rule Making and Memorandum Opinion and Order* in this proceeding, ET Docket No. 95-18, 63 FR 69606, December 17, 1998, to deny a request filed by IUSG to require incumbent BAS

and FS licensees to submit extensive information to facilitate the relocation process. We note that much of the information requested by IUSG is already available in our data bases, and that the remainder would be made available by incumbent BAS and FS licensees in the relocation negotiation process.

4. In response to an *Emergency Petition for Further Limited Consideration* filed by IUSG, we decline as moot a request to impose a "freeze" on the licensing of new BAS facilities. We reject this petition because we made no prior decision on the issue of freezing BAS licenses, and therefore the issue was not ripe for reconsideration. Further, we address the freezing of BAS licenses in the *Second Report and Order*.

5. This allocation will require that the candidate bands be cleared of BAS incumbents in the 1990-2025 MHz band. In order to accommodate these incumbents, we confirm our decision to require MSS licensees to bear the costs of moving BAS licensees to their new band, at 2025-2110 MHz. The relocation of BAS licensees will occur in two phases. In Phase I, the BAS band, which currently consists of seven channels of 17 or 18 megahertz, will be narrowed by reducing the channels to 14.5 or 15 megahertz each, freeing 18 megahertz of spectrum at 1990-2008 MHz for initiation of MSS operations. When this 18 megahertz is fully occupied, and MSS licensees require the remaining 17 megahertz of spectrum, at 2008-2025, Phase II of the BAS relocation will begin, and the BAS band will be reduced to its final form of seven channels of 12.1 or 12.4 megahertz width, at 2025-2110 MHz. BAS licensees and MSS licensees will negotiate the terms of relocation, but generally, the costs of relocation will be borne by MSS.

6. The MSS allocation will also require relocation of FS microwave incumbents. We addressed this issue in the *First Report and Order and Further Notice of Proposed Rule Making* in ET Docket No. 92-9, 58 FR 46457, September 2, 1993, and will follow the same procedures, requiring that MSS licensees negotiate relocation with FS licensees and bear the cost of relocating them from the 2165-2200 MHz band.

Final Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act (RFA),¹ an Initial

¹ See 5 U.S.C. 601. The RFA, see 5 U.S.C. 601 et seq., has been amended by the Contract With America Advancement Act of 1996, Public Law 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of

Regulatory Flexibility Analysis (IRFA) was incorporated into the *First Report and Order and Further Notice of Proposed Rule Making*² and the *Memorandum Opinion and Order and Third Notice of Proposed Rule Making and Order* (Third Notice)³ in this docket, ET Docket No. 95-18. The Commission sought written comment on the proposals in the *First R&O/Further Notice* and the *Third Notice*, including comment on the IRFAs. The present Final Regulatory Flexibility Analysis (FRFA) in this *Second Report and Order and Second Memorandum Opinion and Order* (*Second R&O/Second MO&O*) conforms to the RFA.⁴

A. Need for, and Objectives of, this *Second R&O/Second MO&O*

8. This *Second R&O/Second MO&O* establishes rules to govern the relocation of Broadcast Auxiliary Service (BAS), Local Television Transmission Service (LTTTS), and Cable Television Relay Service (CARS) licensees from the 1990-2025 MHz band to the remainder of the BAS band, at 2025-2110 MHz. The 1990-2025 MHz band has been reallocated to the Mobile-Satellite Service (MSS). This *Second R&O/Second MO&O* also establishes rules to govern the relocation of Fixed Service (FS) licensees from the 2165-2200 MHz spectrum, reallocated to the MSS, to FS bands above 4 GHz. These rules are designed to ensure an orderly and expeditious transition of these licensees from the 2 GHz spectrum so that MSS operations may be conducted in a designated segment of the spectrum. At the same time, the rules are designed to ensure that incumbent BAS, LTTTS, CARS, and FS licensees suffer no harm from relocation.

B. Summary of Significant Issues Raised in Comments in Response to the IRFAs

9. No comments were filed in response to the IRFAs. Nonetheless, the Commission considered the impact of our rules governing the relocation of the BAS, LTTTS, CARS, and FS licensees, some of whom may be small entities, from the 2 GHz spectrum. This 2 GHz spectrum was reallocated to the MSS, none of whose licensees will be small entities. The Commission considered several different relocation scenarios, some of which would have imposed the economic burden of relocation on BAS, LTTTS, CARS, and FS licensees, including small entities. The

the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² First R&O/Further Notice, 12 FCC Rcd 7388, 62 FR 19509, April 22, 1997.

³ Third Notice, 13 FCC Rcd 23949, 63 FR 69606.

⁴ See 5 U.S.C. 604.

Commission rejected a variety of scenarios which would have shifted some or all of the economic burden of relocation from MSS licensees to BAS, LTTS, CARS, and FS licensees. See Section E *infra* for a discussion of the alternatives considered by the Commission.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

10. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁵ The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act.⁶ A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁷ The term "small entity" also has the same meaning as "small governmental jurisdiction," which means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."⁸

(a) *BAS, LTTS, and CARS Licensees:* This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit to the studio). CARS includes transmitters generally used to relay cable programming within cable television system distribution systems. BAS and LTTS licensees are entities classified by the SBA as Category 4833 (Television Broadcasting Stations), which are small businesses if they have annual revenues below 10.5 million dollars.⁹ CARS licensees are classified as Category 4841 (Cable and Other Pay Television Services), which are small businesses if they have annual revenues below 11 million dollars.¹⁰

(1) The Commission estimates that there are a total of approximately 2200 BAS, LTTS, and CARS licensees in the United States. Neither the Commission nor the Department of Commerce collect financial information on any broadcast facility, including these auxiliary

facilities. We believe, however, that few, if any, of these licensees could be classified as small businesses. Most auxiliary transmitters are owned by parent stations that would likely have annual revenues that exceed the SBA maximum to be designated as a small business (\$10.5 million for a TV station and \$11 million for a cable system). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.

(b) *MSS Licensees:* The Commission has not developed a definition of small entities applicable to MSS licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Category 4899 (Communications Services "Not Elsewhere Classified" (NEC)). This definition provides that a small entity is one with \$11.0 million or less in annual receipts.¹¹ Eight potential MSS licensees will be affected by this rule making proceeding. Given the extremely high start-up costs for MSS companies, none will be small entities.

(c) *FS Licensees:* The Commission has not developed a definition of small entities applicable to FS microwave licensees. Licensees in this service are State and local governments and SBA Categories 4813 (Telephone Communications, Except Radiotelephone),¹² 4619 (Pipelines, N.E.C.),¹³ 4911 (Electric Services) and other utility companies,¹⁴ and Major Group 47 (Transportation Services, i.e., railroads).¹⁵ Therefore, the applicable definitions of small entity are the definition under the SBA rules applicable to these activities. This definition provides that small entities are Telephone Communications companies employing fewer than 1500 employees, Pipeline companies with annual receipts of less than \$25 million, Electric Services companies generating less than 4 million megawatt hours annually, and Transportation Services, including railroads, with annual receipts of less than \$5 million annually. Licensees in the FS also include State and local governments with populations of less than 50,000.

(1) Some FS licensees are likely to be small entities. Using Census Bureau data we estimate that 81,600 of the State and local Governments are small entities.¹⁶ There are approximately 4200

FS microwave links licensed to Telephone Communications companies. The Commission has no data on how many of these links belong to each licensee. Therefore, the total number of telephone licensees must be 4200 or less, of whom a minority may be small entities. Approximately 4000 FS microwave links are licensed to Pipeline companies, Electric Services companies, Transportation Services including railroads, and local and State governments. The Commission has no data on how many of these links belong to each licensee. Therefore, the total number of Pipeline companies, Electric Services companies, Transportation Services including railroads, and local and State government licensees must be 4000 or less, of whom a minority may be small entities.

(d) Using the best data available, the Commission estimates that a large majority of BAS, LTTS, CARS, and FS licensees are not small entities. Because of the high costs attendant to the start-up of MSS operations, none of the eight MSS licensees affected by this rule making will be small entities.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

11. The adopted rules would require affected BAS, LTTS, CARS, and FS licensees, some of whom may be small entities, to negotiate with MSS licensees for relocation (including replacement or retuning of equipment) or rechannelization or both. These negotiations would include negotiating timetables for relocation and costs. These negotiations are likely to require the skills of accountants and engineers to evaluate the economic and technical requirements of relocation, and of attorneys or other negotiators to conduct negotiations. The estimated cost per incumbent BAS, LTTS, CARS, or FS licensee of relocation negotiations is \$2000 to \$8000. The Commission has permitted BAS, LTTS, CARS, and FS licensees to negotiate collectively for relocation. Collective negotiations, if employed by these licensees, will reduce the costs of negotiation for each licensee.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

12. The Commission decided that new MSS licensees, none of whom will be small entities, will be required to relocate or rechannelize incumbent BAS, LTTS, CARS, and FS licensees in the 2 GHz band, some of whom are likely to be small entities, at the expense of the new MSS licensees. The

⁵ 5 U.S.C. 603(b)(3).

⁶ *Id.* 601(3).

⁷ *Id.* At 632.

⁸ *Id.* At 601(5).

⁹ 13 CFR 121.210, Standard Industrial Classification (SIC) Code 4833.

¹⁰ *Id.* SEC Code 4812.

¹¹ *Id.* SIC Code 4899.

¹² *Id.* SIC Code 4813.

¹³ *Id.* SIC Code 4619.

¹⁴ *Id.* SIC Code 4911.

¹⁵ *Id.* SIC Major Group 47.

¹⁶ See 5 U.S.C. 601(5).

Commission considered the alternative of requiring current BAS, LTTS, CARS, and FS licensees in the 2 GHz band to relocate or rechannelize at their own expense. The Commission rejected this alternative as excessively burdensome on these incumbent licensees, including small entities, and not in the public interest.

13. MSS commenters advocated requiring BAS, LTTS, and CARS licensees to finance their own relocation as their equipment depreciated and they purchased new equipment, claiming that the total costs of relocation, added to the high cost of launching satellites, would cripple the nascent MSS industry. MSS commenters also asserted, however, that there is a huge, underserved demand for MSS. We believe that MSS licensees will build the cost of relocating BAS, LTTS, and CARS licensees into their financial plans, and still will be able to provide service at a profit. In the alternative, MSS may choose to defer expeditious access to the spectrum currently heavily used by BAS, LTTS, and CARS licensees and defer deployment of MSS systems for ten years, in which case no relocation or rechannelization would be required.

14. MSS commenters advocated requiring MSS licensees to pay only the depreciated value of the equipment of incumbent FS licensees, some of which may be small entities. The Commission rejected this position, adhering to our requirement that MSS licensees must provide relocated incumbent FS

licensees with comparable facilities in the bands to which the FS licensees are relocated.

15. In the case of involuntary relocation of BAS, LTTS, CARS, and FS licensees, the Commission applied the requirements of our *Emerging Technologies* policies: (1) payment of all relocation expenses by the MSS operator, (2) full comparability of replacement facilities, and (3) the right of the incumbents to demand that MSS licensees cure any defects, should the replacement facilities prove not to be fully comparable after relocation. The relocation requirements adopted by the Commission will guarantee that BAS, LTTS, CARS, and FS licensees, some of whom are likely to be small entities, will suffer no, or minimal, economic impact as a result of relocation.

Report to Congress: The Commission will send a copy of the *Second R&O/Second MO&O*, including this FRFA, in a report to be sent to Congress pursuant to the SBREFA, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Second R&O/Second MO&O*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 2

Frequency allocations and radio treaty matters, Radio.

47 CFR Parts 74 and 101

Radio.

47 CFR Part 78

Cable television, Radio.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Rule Changes

For the reasons discussed in the preamble, parts 2, 74, 78, and 101 of title 47 of the Code of Federal Regulations are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302(a), 303, and 336, unless otherwise noted.

2. In § 2.106, the Table of Frequency Allocations is amended to read as follows:

- a. Revise pages 48 and 49 of the Table.
- b. In the list of United States footnotes, revise footnote US90, remove footnotes US111 and US219, and add footnotes US346 and US347.
- c. In the list of non-Federal Government footnotes, revise footnotes NG23, NG118 and NG153, and add footnotes NG156 and NG168.

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

S5.149 S5.341 S5.385 S5.386 S5.387 S5.388		1755-1850 FIXED MOBILE	1755-1850	
1930-1970 FIXED MOBILE	1930-1970 FIXED MOBILE Mobile-satellite (Earth-to-space)	1850-1990 FIXED MOBILE	1850-1990 FIXED MOBILE	RF Devices (15) Personal Communications (24) Fixed Microwave (101)
S5.388	S5.388			
1970-1980 FIXED MOBILE				
S5.388				
1980-2010 FIXED MOBILE				
MOBILE-SATELLITE (Earth-to-space)				Satellite Communications (25)
S5.388 S5.389A S5.389B S5.389F				
2010-2025 FIXED MOBILE	2010-2025 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space)	1990-2025 MOBILE-SATELLITE (Earth-to-space)	1990-2025 MOBILE-SATELLITE (Earth-to-space)	
S5.388	S5.388 S5.389C S5.389D S5.389E S5.390		NG156	
2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) FIXED MOBILE S5.391 SPACE RESEARCH (Earth-to-space) (space-to-space)		2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION- SATELLITE (Earth-to- space) (space-to-space) SPACE RESEARCH (Earth- to-space) (space-to-space)	2025-2110 FIXED NG23 NG118 MOBILE S5.391	TV Auxiliary Broadcasting (74F) Cable TV Relay (78) Local TV Transmission (101J)
S5.392		S5.391 S5.392 US90 US222 US346 US347	S5.392 US90 US222 US346 US347	

2110-2345 MHz (UHF)

International Table		United States Table		FCC Rule Part(s)
Region 1	Region 2	Federal Government	Non-Federal Government	
2110-2120 FIXED MOBILE SPACE RESEARCH (deep space) (Earth-to-space)		2110-2120	2110-2150 FIXED NG23 MOBILE	Public Mobile (22) Fixed Microwave (101) Note: 2110-2150 MHz must be auctioned by September 30, 2002.
S5.388		US252		
2120-2160 FIXED MOBILE	2120-2160 FIXED MOBILE Mobile-satellite (space-to-Earth)	2120-2200	US252 NG153 2150-2160 FIXED NG23	Domestic Public Fixed (21) Fixed Microwave (101)
S5.388	S5.388			
2160-2170 FIXED MOBILE	2160-2170 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth)		2160-2165 FIXED NG23 MOBILE NG153	Domestic Public Fixed (21) Public Mobile (22) Fixed Microwave (101)
S5.388 S5.392A	S5.388 S5.389C S5.389D S5.389E S5.390			
2170-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth)			2165-2200 MOBILE-SATELLITE (space-to-Earth)	Satellite Communications (25)
S5.388 S5.389A S5.389F S5.392A			NG23 NG168	
2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED MOBILE S5.391 SPACE RESEARCH (space-to-Earth) (space-to-space)		2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-space) Earth) (space-to-space) FIXED (line-of-sight only)	2200-2290	

* * * * *
United States (US) Footnotes
* * * * *

US90 In the band 2025–2110 MHz, the power flux-density at the Earth’s surface produced by emissions from a space station in the space operation, Earth exploration-satellite, or space research services that is transmitting in the space-to-space direction, for all conditions and all methods of modulation, shall not exceed the following values in any 4 kHz sub-band:

- (a) – 154 dBW/m² for angles of arrival above the horizontal plane (δ) of 0° to 5°,
(b) – 154 + 0.5(δ – 5) dBW/m² for δ of 5° to 25°, and
(c) – 144 dBW/m² for δ of 25° to 90°.

* * * * *

US346 Except as provided by footnote US222, the use of the band 2025–2110 MHz by the Government space operation service (Earth-to-space), Earth exploration-satellite service (Earth-to-space), and space research service (Earth-to-space) shall not constrain the deployment of the Television Broadcast Auxiliary Service, the Cable Television Relay Service, or the Local Television Transmission Service. To facilitate compatible operations between non-Government terrestrial receiving stations at fixed sites and Government earth station transmitters, coordination is required. To facilitate compatible operations between non-government terrestrial transmitting stations and Government spacecraft receivers, the terrestrial transmitters shall not be high-density systems (see Recommendations ITU–R SA.1154 and ITU–R F.1247).

US347 In the band 2025–2110 MHz, non-Government Earth-to-space and space-to-space transmissions may be authorized in the space research and Earth exploration-satellite services subject to such conditions as may be applied on a case-by-case basis. Such transmissions shall not cause harmful interference to Government and non-Government stations operating in accordance with the Table of Frequency Allocations.

* * * * *

Non-Federal Government (NG) Footnotes
* * * * *

NG23 Frequencies in the band 2100–2200 MHz may also be assigned to stations in the International Fixed Public Radiocommunication Services located south of 25° 30’ North Latitude in the State of Florida and in U.S. insular areas in the Caribbean, except that no new assignments in the band 2150–2162 MHz will be made to such stations after February 25, 1974 and no new assignments in the band 2165–2200 MHz will be made to such stations after June 27, 2000.

* * * * *

NG118 In the band 2025–2110 MHz, television translator relay stations may be authorized to use frequencies on a secondary basis to other stations in the Television Broadcast Auxiliary Service that are operating in accordance with the Table of Frequency Allocations.

* * * * *

NG153 The bands 2110–2150 MHz and 2160–2165 MHz are reserved for future

emerging technologies on a co-primary basis with the fixed and mobile services. Allocations to specific services will be made in future proceedings.

* * * * *

NG156 The band 1990–2025 MHz is also allocated to the fixed and mobile services on a primary basis for facilities where the receipt date of the initial application was prior to June 27, 2000, and on a secondary basis for all other initial applications. Not later than September 6, 2010, the band 1990–2025 MHz is allocated to the fixed and mobile services on a secondary basis.

* * * * *

NG168 The band 2165–2200 MHz is also allocated to the fixed and mobile services on a primary basis for facilities where the receipt date of the initial application was prior to January 16, 1992, and on a secondary basis for all other initial applications. Not later than September 6, 2010, the band 2165–2200 MHz is allocated to the fixed and mobile services on a secondary basis.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES

3. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f) and 554.

4. Section 74.602 is amended by adding paragraphs (a)(3) and (a)(4) to read as follows:

§ 74.602 Frequency assignment.

(a) * * *

(3)(i) After January 1, 2000, stations may adhere to the channel plan specified in paragraph (a) of this section, or to the following channel plan in Band A:

- Channel A01—2008–2023 MHz
Channel A02—2023–2037.5 MHz
Channel A03—2037.5–2052 MHz
Channel A04—2052–2066.5 MHz
Channel A05—2066.5–2081 MHz
Channel A06—2081–2095.5 MHz
Channel A07—2095.5–2110 MHz

(ii) Broadcast Auxiliary Service, Cable Television Remote Pickup Service, and Local Television Transmission Service licensees in Nielsen Designated Market Areas 1–30 will be required to use the Band A channel plan in paragraph (a)(3)(i) of this section after completion of relocation by an Emerging Technologies licensee in accordance with § 74.690. Licensees declining relocation and licensees in Nielsen Designated Market Areas 31 and higher will be required to discontinue use of the 1990–2008 MHz band when informed by a Mobile-Satellite Service licensee that it intends to begin operations in the 1990–2008 MHz band.

(4)(i) When Mobile-Satellite Service licensees begin operations in the 2008–2025 MHz band, stations may adhere to the channel plan specified, but are forbidden to use Channel A01, or may adhere to the following channel plan in Band A:

- Channel A01—2025–2037.4 MHz
Channel A02—2037.4–2049.5 MHz
Channel A03—2049.5–2061.6 MHz
Channel A04—2061.6–2073.7 MHz
Channel A05—2073.7–2085.8 MHz
Channel A06—2085.8–2097.9 MHz
Channel A07—2097.9–2110 MHz

(ii) Broadcast Auxiliary Service, Cable Television Remote Pickup Service, and Local Television Transmission Service licensees in Nielsen Designated Market Areas 1–30 will be required to use the Band A channel plan in paragraph (a)(4)(i) of this section after completion of relocation by an Emerging Technologies licensee in accordance with § 74.690. Licensees declining relocation and licensees in Nielsen Designated Market Areas 31 and higher will be required to discontinue use of the 2008–2025 MHz band when informed by a Mobile-Satellite Service licensee that it intends to begin operations in the 2008–2025 MHz band.

5. Section 74.690 is added to Subpart F to read as follows:

§ 74.690 Transition of the 1990–2025 MHz band from the Broadcast Auxiliary Service to emerging technologies.

(a) Licensees proposing to implement Mobile-Satellite Services using emerging technologies (MSS Licensees) may negotiate with Broadcast Auxiliary Service licensees (Existing Licensees) in the 1990–2110 MHz band for the purpose of agreeing to terms under which the Existing Licensees would relocate their operations to the 2025–2110 MHz band, to other authorized bands, or to other media; or alternatively, would discontinue use of the 2008–2025 MHz band when informed by a Mobile-Satellite Service licensee that it intends to begin operations in the 2008–2025 MHz band.

(b) Existing Licensees in the 1990–2025 MHz band allocated for licensed emerging technology services will maintain primary status in these bands until an MSS Licensee completes relocation of the Existing Licensee’s operations.

(c) The Commission will amend the operating license of the Existing Licensee to secondary status only if the following requirements are met:

- (1) The service applicant, provider, licensee, or representative using an emerging technology guarantees payment of all relocation costs, including all engineering, equipment,

site and FCC fees, as well as any reasonable additional costs that the relocated Existing Licensee might incur as a result of operation in another authorized band or migration to another medium;

(2) The MSS Licensee completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave or Local Television Transmission frequencies and frequency coordination; and

(3) The MSS Licensee builds the replacement system and tests it for comparability with the existing system.

(d) The Existing Licensee is not required to relocate until the alternative facilities are available to it for a reasonable time to make adjustments, determine comparability, and ensure a seamless handoff. If within one year after the relocation to new facilities the Existing Licensee demonstrates that the new facilities are not comparable to the former facilities, the MSS Licensee must remedy the defects.

(e) Subject to the terms of this paragraph (e), Phase I of the relocation of Existing Licensees will be carried out in the following manner:

(1) Beginning September 6, 2010, Existing Licensees and MSS Licensees may negotiate individually or collectively for relocation of Existing Licensees to one of the channel plans specified in § 74.602(a)(3). Parties may not decline to negotiate, though Existing Licensees may decline to be relocated. MSS Licensees must relocate all Existing Licensees in Nielsen Designated Market Areas 1–30 prior to beginning operations, except those Existing Licensees that decline relocation. If the parties are unable to reach a negotiated agreement, MSS Licensees may involuntarily relocate Existing Licensees after two years. As of the date that any MSS Licensee announces the beginning of operations in the 1990–2008 MHz band, licensees who are not on the new channel plan specified in § 74.602(a)(3) must discontinue use of Channel A01 (1990–2008 MHz).

(2) Before negotiating with MSS Licensees, Existing Licensees in Nielsen Designated Market Areas where there is a BAS frequency coordinator must coordinate and select a band plan for the market area. Thereafter, all negotiations must produce solutions that adhere to the market area's band plan.

(3) After the date the first MSS Licensee begins operations, MSS

Licensees must relocate Existing Licensees in Nielsen Designated Market Areas 31–100 within three years, unless any Existing Licensee declines relocation.

(4) Beginning on the date any MSS Licensee announces in writing to Existing Licensees its intention to begin operations in the 2008–2025 MHz band, Existing Licensees and MSS Licensees may negotiate individually or collectively for relocation of Existing Licensees to one of the channel plans specified in § 74.602(a)(4). MSS Licensees must relocate all Existing Licensees in Nielsen Designated Market Areas 1–30 prior to beginning operations, except those Existing Licensees that decline relocation. If the parties are unable to reach a negotiated agreement, MSS Licensees may involuntarily relocate Existing Licensees after two years. As of the date that any MSS Licensee announces its intention to begin operations in the 2008–2025 MHz band, licensees who are not on the new channel plan specified in § 74.602(a)(4) must discontinue use of Channel A01 (2008–2023 MHz).

(5) After the date the first MSS Licensee begins operations in the 2008–2025 MHz band, MSS Licensees must relocate Existing Licensees in Nielsen Designated Market Areas 31–100 within three years, and in the remaining Nielsen Designated Market Areas within five years.

(6) Ten years after the date specified in paragraph (e)(1) of this section, all Existing Licensees will become secondary in the 1990–2025 MHz band. Upon written demand by any MSS Licensee, Existing Licensees must cease all operations in the 1990–2025 MHz band within six months.

PART 78—CABLE TELEVISION RELAY SERVICE

6. The authority citation for part 78 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

§ 78.11 [Amended]

7. Section 78.11(f) is amended by removing the term “1990–2110 MHz” and adding in its place “2025–2110 MHz”.

8. Section 78.18 is amended by designating the text following the heading of paragraph (a)(6) as paragraph (a)(6)(i) and adding paragraph (a)(6)(ii) to read as follows:

§ 78.18 Frequency assignments.

(a) * * *

(6) * * *

(i) * * *

(ii) After a licensee has been relocated in accordance with the provisions of § 78.40, operations will be in the band 2025–2110 MHz. The following channel plan will apply, subject to the provisions of § 74.604 of this chapter:

Frequency Band (MHz)

2025–2037.4

2037.4–2049.5

2049.5–2061.6

2061.6–2073.7

2073.7–2085.8

2085.8–2097.9

2097.9–2110

* * * * *

9. Section 78.40 is added to Subpart B to read as follows:

§ 78.40 Transition of the 1990–2025 MHz band from the Cable Television Relay Service to Emerging Technologies.

(a) Licensees proposing to implement Mobile-Satellite Services using emerging technologies (MSS Licensees) may negotiate with Cable Television Relay Service licensees (Existing Licensees) in the 1990–2110 MHz band for the purpose of agreeing to terms under which the Existing Licensees would relocate their operations to the 2025–2110 MHz band, to other authorized bands, or to other media; or alternatively, would accept a sharing arrangement with the MSS Licensee that may result in an otherwise impermissible level of interference to the Existing Licensee's operations.

(b) Existing Licensees in the 1990–2025 MHz band allocated for licensed emerging technology services will maintain primary status in these bands until an MSS Licensee completes relocation of the Existing Licensee's operations.

(c) The Commission will amend the operating license of the Existing Licensee to secondary status only if the following requirements are met:

(1) The service applicant, provider, licensee, or representative using an emerging technology guarantees payment of all relocation costs, including all engineering, equipment, site and FCC fees, as well as any reasonable additional costs that the relocated Existing Licensee might incur as a result of operation in another authorized band or migration to another medium;

(2) The MSS Licensee completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave or Local Television

Transmission frequencies and frequency coordination; and

(3) The MSS Licensee builds the replacement system and tests it for comparability with the existing system.

(d) The Existing Licensee is not required to relocate until the alternative facilities are available to it for a reasonable time to make adjustments, determine comparability, and ensure a seamless handoff.

(e) If within one year after the relocation to new facilities the Existing Licensee demonstrates that the new facilities are not comparable to the former facilities, the MSS Licensee must remedy the defect.

(f) Subject to the terms of this paragraph (f), Phase I of the relocation of Existing Licensees will be carried out in the following manner:

(1) Beginning September 6, 2000, Existing Licensees and MSS Licensees may negotiate individually or collectively for relocation of Existing Licensees to one of the channel plans specified in § 74.602(a)(3) of this chapter. Parties may not decline to negotiate, though Existing Licensees may decline to be relocated. MSS Licensees must relocate all Existing Licensees in Nielsen Designated Market Areas 1–30 prior to beginning operations, except those Existing Licensees that decline relocation. If the parties are unable to reach a negotiated agreement, MSS Licensees may involuntarily relocate Existing Licensees after two years. As of the date that any MSS Licensee announces the beginning of operations in the 1990–2008 MHz band, licensees who are not on the new channel plan specified in § 74.602(a)(3) of this chapter must discontinue use of Channel A01 (1990–2008 MHz).

(2) Before negotiating with MSS Licensees, Existing Licensees in Nielsen Designated Market Areas where there is a BAS frequency coordinator must coordinate and select a band plan for the market area. Thereafter, all negotiations must produce solutions that adhere to the market area's band plan.

(3) After the date the first MSS Licensee begins operations, MSS Licensees must relocate Existing Licensees in Nielsen Designated Market Areas 31–100 within three years, unless any Existing Licensee declines relocation.

(4) Beginning on the date any MSS Licensee announces in writing to Existing Licensees its intention to begin operations in the 2008–2025 MHz band, Existing Licensees and MSS Licensees may negotiate individually or collectively for relocation of Existing Licensees to one of the channel plans

specified in § 74.602(a)(4) of this chapter. MSS Licensees must relocate all Existing Licensees in Nielsen Designated Market Areas 1–30 prior to beginning operations, except those Existing Licensees that decline relocation. If the parties are unable to reach a negotiated agreement, MSS Licensees may involuntarily relocate Existing Licensees after two years. As of the date that any MSS Licensee announces its intention to begin operations in the 2008–2025 MHz band, licensees who are not on the new channel plan specified in § 74.602(a)(4) of this chapter must discontinue use of Channel A01 (2008–2023 MHz).

(5) After the date the first MSS Licensee begins operations in the 2008–2025 MHz band, MSS Licensees must relocate Existing Licensees in the remaining Nielsen Designated Market Areas within three years.

(6) Ten years after the date specified in paragraph (f)(1) of this section, all Existing Licensees will become secondary in the 1990–2025 MHz band. Upon written demand by any MSS Licensee, Existing Licensees must cease all operations in the 1990–2025 MHz band within six months.

§ 78.101 [Amended]

10. In § 78.101(a), the table is amended by removing the term “1,990 to 2,110” in the first column and adding in its place “2,025 to 2,110”.

11. In § 78.103(e) the table is revised to read as follows:

§ 78.103 Emissions and emission limitations.

* * * * *

(e) * * *

Frequency band (MHz)	Maximum authorized bandwidth (MHz)
1,990 to 2,110	17 or 18. ¹
6,425 to 6,525	8 or 25.
6,875 to 7,125	25.
12,700 to 13,250	25.
17,700 to 19,700	80.
31,000 to 31,300	25 or 50.

¹ After a licensee has been relocated in accordance with § 78.40, the maximum authorized bandwidth in the frequency band 2,025 to 2,110 MHz will be 12.1/12.4 MHz.

PART 101—FIXED MICROWAVE SERVICES

12. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

13. Section 101.69 is amended by adding paragraph (d) to read as follows:

§ 101.69 Transition of the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands from the fixed microwave services to personal communications services and emerging technologies.

* * * * *

(d) Relocation of FMS licensees in the 2165–2200 MHz band by Mobile-Satellite Service (MSS) licensees will be subject to mandatory negotiations only. Mandatory negotiation periods are defined as follows:

- (1) Non-public safety incumbents will have a two-year mandatory negotiation period; and
- (2) Public safety incumbents will have a three-year mandatory negotiation period.

14. Section 101.73 is amended by adding paragraph (d) to read as follows:

§ 101.73 Mandatory negotiations.

* * * * *

(d) Provisions for Relocation of Fixed Microwave Licensees in the 2165–2200 MHz band. Mandatory negotiations will commence when the Mobile-Satellite Service (MSS) licensee informs the fixed microwave licensee in writing of its desire to negotiate. Mandatory negotiations will be conducted with the goal of providing the fixed microwave licensee with comparable facilities, defined as facilities possessing the following characteristics:

(1) *Throughput.* Communications throughput is the amount of information transferred within a system in a given amount of time. If analog facilities are being replaced with analog, comparable facilities provide an equivalent number of 4 kHz voice channels. If digital facilities are being replaced with digital, comparable facilities provide equivalent data loading bits per second (bps).

(2) *Reliability.* System reliability is the degree to which information is transferred accurately within a system. Comparable facilities provide reliability equal to the overall reliability of the FMS system. For digital systems, reliability is measured by the percent of time the bit error rate (BER) exceeds a desired value, and for analog or digital voice transmission, it is measured by the percent of time that audio signal quality meets an established threshold. If an analog system is replaced with a digital system, only the resulting frequency response, harmonic distortion, signal-to-noise and its reliability will be considered in determining comparable reliability.

(3) *Operating Costs.* Operating costs are the cost to operate and maintain the FMS system. MSS licensees would compensate FMS licensees for any increased recurring costs associated with the replacement facilities (e.g.,

additional rental payments, and increased utility fees) for five years after relocation. MSS licensees could satisfy this obligation by making a lump-sum payment based on present value using current interest rates. Additionally, the maintenance costs to the FMS licensee would be equivalent to the 2 GHz system in order for the replacement system to be comparable.

15. Section 101.75 is amended by adding two sentences at the end of paragraph (d), to read as follows:

§ 101.75 Involuntary relocation procedures.

* * * * *

(d) * * * FMS licensees relocated from the 2165–2200 MHz band may not be returned to their former 2 GHz channels. All other remedies specified in this paragraph (d) are available to FMS licensees relocated from the 2165–2200 MHz band, and may be invoked whenever the FMS licensee demonstrates that its replacement facility is not comparable, subject to no time limit.

16. Section 101.83 is added to Subpart B to read as follows:

§ 101.83 Reimbursement of relocation expenses in the 2115–2150 MHz and 2165–2200 MHz bands.

(a) Whenever an ET licensee (including Mobile-Satellite Service licensees) in the 2115–2150 MHz or 2165–2200 MHz bands relocates an incumbent paired microwave link with one path in the 2115–2150 MHz band, and the paired path in the 2165–2200 MHz band, the ET licensee is entitled to reimbursement of 50% of its relocation costs from any subsequently entering ET licensee which would have been required to relocate the same fixed microwave link.

(b) The subsequently entering ET licensee must reimburse the relocating ET licensee before the subsequently entering licensee may begin operations in these bands, unless the subsequently entering ET licensee can demonstrate that, according to established interference criteria, it would not have interfered with the microwave link in question.

(c) The total costs of which 50% is to be reimbursed will not exceed \$250,000 per paired fixed microwave link relocated, nor \$150,000 if a new or modified tower is required.

[FR Doc. 00–19478 Filed 8–4–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1708, MM Docket No. 99–265; RM–9660]

Digital Television Broadcast Services; Monroe, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Noe Corporation L.L.C., licensee of station KNOE–TV, NTSC Channel 8, Monroe, Louisiana, substitutes DTV Channel 7 for DTV Channel 55 at Monroe, Louisiana. See 64 FR 43132, August 9, 1999. DTV Channel 7 can be allotted to Monroe at coordinates (32–11–45 N. and 92–04–10 W.) with a power of 5.0, HAAT of 519 meters, and with a DTV service population of 454 thousand. With this action, this proceeding is terminated.

DATES: Effective September 18, 2000.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–265, adopted August 2, 2000, and released August 3, 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.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Louisiana, is amended by removing DTV Channel 55 and adding DTV Channel 7 at Monroe.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–19888 Filed 8–4–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1707, MM Docket No. 99–317; RM–9743]

Digital Television Broadcast Service; Baton Rouge, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Louisiana Television Broadcasting Corporation, licensee of TV station WBRZ, substitutes DTV 13 for DTV Channel 42 at Baton Rouge, Louisiana. See 64 FR 59148, November 2, 1999. DTV Channel 13 can be allotted to Baton Rouge at coordinates (30–17–49 N. and 91–11–40 W.) with a power of 30, HAAT of 515 meters and with a DTV service population of 1751 thousand. With this action, this proceeding is terminated.

DATES: Effective September 18, 2000.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–317, adopted August 2, 2000, and released August 3, 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.

List of Subjects in 47 CFR PART 73

Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Louisiana, is amended by removing DTV Channel 42 and adding DTV Channel 13 at Baton Rouge.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00-19886 Filed 8-4-00; 8:45 am]

BILLING CODE 6712-01-U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 10

[Docket No. OST-96-1437]

RIN 2105-AC57

Maintenance of and Access to Records Pertaining to Individuals; Amendment

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Editorial correction to final rule.

SUMMARY: This amendment corrects an oversight in the last revision of the rules implementing the Privacy Act, by including the Maritime Administration as a DOT agency subject to these rules.

DATES: This correction is effective June 30, 1997.

FOR FURTHER INFORMATION CONTACT:

Robert I. Ross, Office of the General Counsel, C-10, Department of Transportation, Washington, DC 20590; telephone (202) 366-9156, FAX (202) 366-9170; e-mail bob.ross@ost.dot.gov.

SUPPLEMENTARY INFORMATION: When DOT last revised its regulations implementing the Privacy Act (62 FR 23666; May 1, 1997), we unintentionally omitted the Maritime Administration as an agency of DOT subject to these regulations. It is and has been all along; hence, this correction merely clarifies that fact.

Analysis of Regulatory Impacts

This editorial correction is not a change in the existing rule; therefore, it is not a "significant regulatory action" within the meaning of Executive Order 12866, or significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979). It has no economic impact. I certify that this correction will not have a significant economic impact on a substantial number of small entities.

This editorial correction does not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for

federalism to warrant preparation of a Federalism Assessment.

Finally, the correction does not contain any collection of information requirements requiring review under the Paperwork Reduction Act, as amended.

List of Subjects in 49 CFR Part 10

Privacy.

In accordance with the above, DOT amends 49 CFR Part 10 as follows:

PART 10—[AMENDED]

1. The authority citation for part 10 continues to read as follows:

Authority: 5 U.S.C. 552a; 49 U.S.C. 322.

2. In § 10.5, in the definition of "Department", a new paragraph (j) is added and the introductory text of the section republished to read as follows:

§ 10.5 Definitions.

Unless the context requires otherwise, the following definitions apply in this part:

* * * * *

Department * * *

* * * * *

(j) Maritime Administration.

* * * * *

Issued in Washington, DC on July 27, 2000.

Rosalind A. Knapp,

Deputy General Counsel.

[FR Doc. 00-19764 Filed 8-4-00; 8:45 am]

BILLING CODE 4910-62-P

Proposed Rules

Federal Register

Vol. 65, No. 152

Monday, August 7, 2000

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 46 and 47

[Docket No. FV99-362]

RIN 0581-AB76

Perishable Agricultural Commodities Act: Increase in License and Complaint Filing Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule: withdrawal.

SUMMARY: The Department of Agriculture (USDA) is withdrawing a proposed rule published in the **Federal Register** on February 15, 2000 (65 FR 7462). The proposed rule would have amended the regulations under the Perishable Agricultural Commodities Act (PACA or Act) to increase license fees and the PACA Rules of Practice Other than Formal Disciplinary Proceedings to increase complaint filing fees in reparation actions. Specifically, the annual license fee would have been increased from \$550 to \$600 for very small businesses, and increased from \$550 to \$850 for all other licensees. The informal complaint filing fee would have been increased from \$60 to \$100.

DATES: This proposed rule is withdrawn as of August 14, 2000.

ADDRESSES: The complete file for this notice is available for public inspection by appointment during normal business hours at USDA, 1400 Independence Avenue, SW, Room 2095—So. Bldg., Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Charles W. Parrott, Acting Chief, PACA Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2095—So. Bldg., P.O. Box 96456, Washington, D.C. 20090-6456, phone (202) 720-2272. E-mail charles.parrott@usda.gov.

SUPPLEMENTARY INFORMATION: The Perishable Agricultural Commodities Act (PACA or Act) establishes a code of fair trade practices covering the

marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. The PACA protects growers, shippers, distributors, and retailers dealing in those commodities by prohibiting unfair and fraudulent trade practices. In this way, the law fosters an efficient nationwide distribution system for fresh and frozen fruits and vegetables, benefiting the whole marketing chain from farmer to consumer. USDA's Agricultural Marketing Service (AMS) administers and enforces the PACA.

Historically, the PACA program has been funded through license fees and fees for filing reparation complaints. The PACA Amendments of 1995 (1995 Amendments)¹ increased the annual license from \$400 to \$550 (up to a maximum fee of \$4000) for all licensees except retailers and grocery wholesalers, which were phased out of paying license fees over a 3-year period that concluded on November 14, 1998. Retailers account for approximately 30 percent of all PACA licensees, and provided about 35 percent of the program's revenue prior to being phased out of the license fee requirement. Funds acquired in excess of operating costs are maintained by AMS exclusively for the program's use, without fiscal year limitations, in a separate reserve fund. This reserve is used to offset unanticipated expenses, and provide flexibility to deal with rising program costs.

The 1995 Amendments authorize the Secretary of Agriculture to increase fees to operate the PACA program after November 14, 1998, through rulemaking, provided that the PACA program's financial reserves fall below 25 percent of the projected annual program costs. USDA proposed that license and complaint filing fees be increased when PACA program budget projections for fiscal years 2000 and 2001 showed that the program's assets would have fallen below the required 25 percent of projected expenditures in fiscal year 2001. Without a fee increase, the PACA program would have exhausted its reserves by the end of fiscal year 2003, and would have needed to begin reducing its level of services to the industry. In response, AMS proposed, on February 15, 2000, to

increase license fees and fees charged for filing reparation complaints.

On June 20, 2000, however, President Clinton signed H.R. 2559 (Public Law 106-224), which included \$30.45 million to be deposited into USDA's PACA reserve fund in fiscal year 2001, in order to maintain PACA license and complaint filing fees at current levels. In light of the funds provided to the PACA program by P.L. 106-224, USDA has concluded that it is unnecessary to continue this rulemaking. Therefore, USDA withdraws the proposed rule.

Authority: 7 U.S.C. 499a-499t.

Dated: August 2, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00-19915 Filed 8-4-00; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-209038-89]

RIN 1545-A075

Foreign Trusts That Have U.S. Beneficiaries

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations under section 679 of the Internal Revenue Code relating to transfers of property by U.S. persons to foreign trusts having one or more United States beneficiaries. The proposed regulations affect United States persons who transfer property to foreign trusts. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by November 6, 2000. Requests to speak (with outlines of oral comments) to be discussed at the public hearing scheduled for November 8, 2000, at 10 a.m. must be submitted by October 18, 2000.

ADDRESSES: Send submissions to: CC:MSP:RU (REG-209038-89), room 5226, Internal Revenue Service, POB

¹ Pub. L. 104-48, 109 Stat. 427 (1995).

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:MSP:RU (REG-209038-89), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/regslst.html. The public hearing will be held in room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Concerning the regulations, Willard W. Yates at (202) 622-3880; concerning submissions and the hearing, Sonya M. Cruse, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 679 was added to the Internal Revenue Code (Code) by the Tax Reform Act of 1976 (1976 Act), Public Law 94-445, Sec. 1013(a), (90 Stat. 1614). Section 679 was amended significantly by the Small Business Job Protection Act of 1996 (1996 Act), Public Law 104-188, Secs. 1903(a)(1), 1903(a)(2), 1903(b), 1903(c) and 1903(f) (110 Stat. 1755).

1. Law Prior to 1976

Sections 671 through 678 (the grantor trust rules) treat grantors and other persons who hold certain powers or interests over a domestic or foreign trust as owners of the portion of the trust with respect to which they hold the powers or interests. If the grantor or other person is a U.S. citizen or resident, the grantor trust rules result in the taxation of the worldwide income of the trust (or portion thereof) to the grantor or other person.

Prior to the enactment of section 679, if a trust was not subject to the grantor trust rules (nongrantor trust), the income of the domestic or foreign trust generally was taxed to the trust to the extent the income was not currently distributed or required to be distributed to the beneficiaries of the trust. The income of a foreign nongrantor trust was taxed in basically the same manner as the income of a nonresident alien individual. Foreign trusts were subject to U.S. tax only on their U.S.-source income (other than capital gains) and on any income effectively connected with a U.S. trade or business (or treated as effectively connected with a U.S. trade

or business). Like nonresident alien individuals, foreign nongrantor trusts were generally not subject to U.S. tax on foreign-source income.

Prior to the enactment of section 679, U.S. persons often established foreign nongrantor trusts that invested in assets that generated foreign-source income only. These foreign trusts avoided all U.S. tax on their income. In addition, these trusts generally invested in countries that did not tax interest or dividends paid to foreign investors, and the trusts generally were formed and administered in countries that did not tax trusts. Accordingly, in many cases these trusts paid no income tax anywhere in the world. Although U.S. beneficiaries were subject to U.S. tax when a foreign nongrantor trust distributed income to them, the use of foreign nongrantor trusts permitted tax-free accumulations of income, giving foreign trusts a significant advantage over domestic trusts.

2. Overview of 1976 Changes

Congress believed that allowing tax-free accumulation of income was inappropriate and provided an unwarranted advantage to foreign trusts over domestic trusts. Congress enacted section 679 as part of the 1976 Act to provide generally that where a U.S. person directly or indirectly transfers property to a foreign trust, the income of the foreign trust is taxable to the transferor if the trust has a U.S. beneficiary. Accordingly, the trust is treated as a grantor trust whether or not the transferor retains any power or interest with respect to the trust. Congress enacted exceptions for certain transfers for fair market value, for transfers by reason of death, and for transfers to certain employee benefit trusts.

3. Overview of 1996 Changes

Section 1903 of the 1996 Act made several changes to section 679. These changes focused primarily on areas where taxpayers could improperly avoid the application of section 679. For example, Congress was concerned that certain taxpayers attempted to come within the fair market value exception of section 679(a)(2), thereby avoiding the application of section 679(a)(1), by issuing trust obligations that might not be repaid. H.R. Rep. No. 542, 104th Cong., 2d Sess., pt. 2 at 25 (1996). Accordingly, the 1996 Act added new section 679(a)(3), which generally provides that obligations issued by the trust, by any grantor or beneficiary of the trust, or by any person related to any grantor or beneficiary are not taken into account in applying the fair market

value exception except as provided in regulations.

The 1996 Act also added new sections 679(a)(4) and (5) to prevent taxpayers from improperly avoiding the application of section 679. Section 679(a)(4) ensures that certain foreign persons who transfer property to a foreign trust in anticipation of becoming U.S. persons (pre-immigration trusts) cannot avoid the rules of section 679 by transferring property, directly or indirectly, to a foreign trust and then becoming a resident of the United States within 5 years after the transfer. Section 679(a)(5) prevents U.S. individuals from circumventing section 679 by transferring property to a domestic trust and then causing the domestic trust to become a foreign trust.

In addition to the anti-avoidance measures, Congress added a new exception to the general rule of section 679(a)(1) for transfers of property to certain charitable trusts. Congress also enacted new section 679(c)(3), which provides that beneficiaries who first become U.S. persons more than 5 years after the date of a transfer are disregarded for purposes of applying section 679 with respect to that transfer.

The 1996 Act also amended section 6048 to expand the reporting requirements that apply to (i) a U.S. person who transfers property to a foreign trust, and (ii) a foreign trust that is treated as owned by a U.S. person under the grantor trust rules. The penalties under section 6677 for a failure to comply with these reporting requirements were also significantly increased. See Notice 97-34 (1997-2 C.B. 422) and Forms 3520 and 3520A.

In addition, a transfer of appreciated property by a U.S. person to a foreign trust may trigger the immediate recognition of any gain in the property under section 684. A transfer to a foreign trust that is treated as owned by a U.S. person under section 679 generally is exempt from this requirement at the time of the transfer. However, if the trust subsequently ceases to be treated as owned by the U.S. person, the change in the status of the trust may trigger gain at the time of the change.

Section 679 applies only for income tax purposes. The estate and gift tax provisions of the Code determine whether a transfer to a foreign trust is subject to the federal gift tax, or whether the corpus of a foreign trust is included in the gross estate of the U.S. transferor.

Explanation of Provisions

Section 1.679-1 U.S. Transferor Treated as Owner of Foreign Trust

Section 1.679-1(a) of the proposed regulations provides that a U.S. transferor who transfers property to a foreign trust is treated as the owner of the portion of the trust attributable to the property transferred during each taxable year that the trust is treated as having a U.S. beneficiary. This rule applies without regard to whether the U.S. transferor retains any power described in sections 673 through 677. If the U.S. transferor is treated as the owner of a portion of a trust, under section 671 all income, deductions, and credits attributable to that portion must be taken into account by the U.S. transferor in determining the U.S. transferor's tax liability.

The determination of whether a foreign trust is treated as having a U.S. beneficiary is made under the rules set forth in § 1.679-2. Section 1.679-3 defines the term *transfer*. Section 1.679-4 provides exceptions to the general rule of § 1.679-1. Section 1.679-5 provides special rules for pre-immigration trusts, and § 1.679-6 describes the treatment of a domestic trust that becomes a foreign trust. Section 1.679-7 provides effective dates.

Congress intended section 679 to override section 678. H.R. Rep. No. 658, 94th Cong., 1st Sess., at 209 (1975). Accordingly, § 1.679-1(b) provides that a U.S. transferor will be treated as the owner of the portion of a trust attributable to the property transferred to the trust by the U.S. transferor whether or not another person would be treated as the owner of the same portion of the trust under section 678.

Section 1.679-1(c)(1) defines the term *U.S. transferor* to mean any U.S. person who directly, indirectly, or constructively transfers property to a foreign trust.

Section 1.679-1(c)(2) defines the term *U.S. person* by reference to section 7701(a)(30). Accordingly, section 679 can apply not only to individuals, but also to entities. Section 1.679-1(c)(2) also provides that a U.S. person includes an individual who elects under section 6013(g) to be treated as a U.S. resident and an individual who is a dual resident taxpayer within the meaning of § 301.7701(b)-7(a).

Sections 1.679-1(c)(3), (4), (5), and (6) define the terms *foreign trust*, *property*, *related person*, and *obligation*, respectively.

The proposed regulations do not provide specific guidance on the treatment of joint owners that transfer property to a foreign trust. Treasury and

the IRS invite comments with specific examples of areas that may need comments with specific examples of areas that may need clarification, such as, for example, the treatment of community property or the joint ownership of property by non-citizen spouses.

The rules of this section apply with respect to transfers to foreign trusts after November 6, 2000.

Section 1.679-2: Trusts Treated as Having a U.S. Beneficiary

The proposed regulations employ a broad approach in determining whether a foreign trust is treated as having a U.S. beneficiary. This broad approach is consistent with the legislative history of the 1976 Act. H.R. Rep. No. 658, 94th Cong., 1st Sess., at 210 (1975).

Under § 1.679-2(a)(1), a foreign trust that has received property from a U.S. transferor is treated as having a U.S. beneficiary unless during the taxable year of the U.S. transferor: (i) No part of the income or corpus of the trust may be paid or accumulated to or for the benefit of, either directly or indirectly, a U.S. person; and (ii) if the trust is terminated at any time during the taxable year, no part of the income or corpus of the trust could be paid to or for the benefit of, either directly or indirectly, a U.S. person. For purposes of section 679, foreign trusts generally are treated as having a U.S. beneficiary unless both of these requirements are satisfied.

Section 1.679-2(a)(2)(i) provides that, for purposes of applying these tests, income or corpus is considered to be paid or accumulated to or for the benefit of a U.S. person during a taxable year of the U.S. transferor if during that year, directly or indirectly, income may be distributed to, or accumulated for the benefit of a U.S. person, or corpus may be distributed to, or held for the future benefit of, a U.S. person. This determination is made without regard to whether income or corpus is actually distributed to a U.S. person during that year, and without regard to whether a U.S. person's interest in the trust income or corpus is contingent on a future event.

The proposed regulations recognize that it may be possible for a U.S. person to obtain a future benefit from the trust under certain unexpected circumstances and that the possibility of such circumstances should not necessarily cause the foreign trust to be treated as having a U.S. beneficiary. Accordingly, § 1.679-2(a)(2)(ii) provides a narrow exception to the general determination of whether a U.S. person can obtain a benefit under the foreign trust. Persons

who are not named as possible beneficiaries and are not members of a class of beneficiaries as defined in the trust instrument (or other relevant agreements, understandings, records and documents, as described below) are not taken into consideration for purposes of applying the general rule of § 1.679-2(a)(1) if the U.S. transferor demonstrates to the satisfaction of the Commissioner that their contingent interest in the trust is so remote as to be negligible. This exception does not apply with respect to persons to whom distributions could be made pursuant to a grant of discretion to the trustee or another person. For example, if the trust instrument provides that the trustee can distribute corpus to any of a large class of persons that could include U.S. persons, this exception would not apply.

The proposed regulations require an annual determination of whether a foreign trust is treated as having a U.S. beneficiary. Under § 1.679-2(a)(3), the possibility that a beneficiary who is not a U.S. person could become a U.S. person will not cause that beneficiary to be treated as a U.S. person for purposes of determining whether there is a U.S. beneficiary until the year in which the beneficiary actually becomes a U.S. person. However, if that non-U.S. beneficiary becomes a U.S. person for the first time more than 5 years after the date of the transfer, that beneficiary is not treated as a U.S. person for purposes of the U.S.-beneficiary determination even after the beneficiary actually becomes a U.S. person.

Section 1.679-2(a)(4) makes it clear that a trust may be treated as having a U.S. beneficiary not only by reference to the trust instrument, but also by reference to all other written and oral agreements and understandings relating to the trust. Also, a trust may be treated as having a U.S. beneficiary based on possible amendments to the trust instrument, possible application of local law that would require a U.S. beneficiary (unless the law is not reasonably expected to be applied under the facts and circumstances), or actual or reasonably expected disregard of the terms of the trust instrument by the parties to the trust.

A foreign trust is treated as having a U.S. beneficiary if it can benefit a U.S. person indirectly. Section 1.679-2(b) provides that an amount is treated as paid or accumulated to or for the benefit of a U.S. person if it can be paid to or accumulated for the benefit of a controlled foreign corporation (as defined in section 957(a)); a foreign partnership, if a U.S. person is a partner of such partnership; or a foreign trust or

estate, if such trust or estate has a U.S. beneficiary. In addition, a foreign trust is treated as having a U.S. beneficiary if a U.S. person can benefit indirectly from the foreign trust by receiving distributions from the trust through an intermediary, such as an agent or nominee, through the use of a debit or credit card, or any other means where a U.S. person may obtain an actual or constructive benefit from the trust.

The proposed regulations anticipate situations where a foreign trust's status as having a U.S. beneficiary changes. Section 1.679-2(c)(1) provides that if a foreign trust does not have a U.S. beneficiary initially, but subsequently acquires a U.S. beneficiary, the U.S. transferor is treated as having additional income in the first taxable year of the U.S. transferor in which the trust is treated as having a U.S. beneficiary. The amount of the additional income is equal to the trust's undistributed net income, as defined in section 665(a), at the end of the U.S. transferor's immediately preceding taxable year and is subject to the rules of section 668, providing for an interest charge on accumulation distributions from foreign trusts.

Section 1.679-2(c)(2) provides that if a trust to which a U.S. transferor transferred property is initially treated as having a U.S. beneficiary, but subsequently ceases to be treated as having a U.S. beneficiary, the U.S. transferor is no longer treated as the owner beginning in the following taxable year (unless the U.S. transferor is otherwise treated as the owner under the grantor trust rules). The U.S. transferor is treated as making a transfer to the foreign trust that may be subject to the gain recognition rules of section 684.

The rules of this section apply with respect to transfers to foreign trusts after November 6, 2000.

Section 1.679-3 Transfers

Section 1.679-3(a) of the proposed regulations broadly defines the term transfer as any direct, indirect, or constructive transfer by a U.S. person to a foreign trust. The rules are generally consistent with the rules for determining whether a person is considered to be a grantor of a trust under § 1.671-2(e).

Section 1.679-3(b) provides that a transfer of property to a foreign trust from either a domestic or foreign trust that is owned by a U.S. person under sections 673 through 679 is treated as a transfer from the owner of the transferor trust. For example, if a U.S. person is treated as the owner of a domestic trust under section 676, and that domestic

trust transfers property to a foreign trust, the U.S. person is treated as having transferred the property to the foreign trust.

Section 1.679-3(c) provides rules for determining when there is an indirect transfer. Under § 1.679-3(c)(1), a transfer to a foreign trust by any person to whom a U.S. person transfers property (referred to as an intermediary) is treated as an indirect transfer by a U.S. person if the transfer is made pursuant to a plan one of the principal purposes of which is the avoidance of U.S. tax. Section 1.679-3(c)(2) deems a transfer to have been made pursuant to such a plan if the U.S. transferor is related to a U.S. beneficiary of the foreign trust, or has another relationship with the foreign trust that establishes a reasonable basis for concluding that the U.S. transferor would make a transfer to the foreign trust, and the U.S. person cannot demonstrate to the satisfaction of the Commissioner that: (i) The intermediary has a relationship with a U.S. beneficiary of the foreign trust that establishes a reasonable basis for concluding that the intermediary would make a transfer to the foreign trust, (ii) the intermediary acted independently of the U.S. transferor, (iii) the intermediary is not an agent of the U.S. transferor under generally applicable United States agency principles, and (iv) that the intermediary timely complied with the reporting requirements of section 6048 (including Notice 97-34), if applicable. This test is consistent with the legislative history of the 1976 Act. H.R. Rep. No. 658, 94th Cong., 1st Sess., at 209 (1975). This test is also similar to the test in § 1.643(h)-1(a), although the presumption in the proposed regulations applies without regard to the period of time between the transfer from the U.S. person to the intermediary and from the intermediary to the foreign trust.

Section 1.679-3(c)(3) explains that if a transfer is treated as an indirect transfer, the intermediary generally is treated as an agent of the U.S. transferor, and the property is treated as transferred to the foreign trust by the U.S. transferor in the year the property is transferred, or made available, by the intermediary to the foreign trust. The fair market value of the property transferred generally is determined as of the date of the transfer by the intermediary to the foreign trust. Although the intermediary is not treated as having transferred that property to the foreign trust for purposes of section 679, the intermediary must comply with the reporting requirements of section 6048, if applicable.

Section 1.679-3(d) provides that a constructive transfer includes any assumption or satisfaction of a foreign trust's obligation. For example, a U.S. transferor's payment of a foreign trust's obligation to a third party is treated as a constructive transfer.

Congress anticipated that guarantees of a trust obligation would be treated as transfers. H.R. Rep. No. 658, 94th Cong., 1st Sess., at 209 (1975). Section 1.679-3(e) provides rules regarding the treatment of guarantees as transfers. If a foreign trust borrows money or other property from either a U.S. or non-U.S. person who is not a related person with respect to the trust (referred to as the lender), and a U.S. person who is a related person with respect to the trust (referred to as the U.S. guarantor) guarantees the foreign trust's obligation, the U.S. guarantor is treated as having made a transfer to the foreign trust. The amount deemed transferred is the guaranteed portion of the adjusted issue price of the obligation plus any accrued but unpaid stated interest. Payments of principal by the trust with respect to the obligation are taken into account on and after the date of the payment in determining the portion of the trust attributable to the property deemed transferred.

Section 1.679-3(f) provides specific rules regarding transfers by a U.S. person to an entity owned by a foreign trust if the U.S. person is related to the foreign trust. The transfer is treated as a transfer from the U.S. person to the foreign trust, followed by a transfer from the foreign trust to the entity owned by the foreign trust, unless the U.S. person demonstrates to the satisfaction of the Commissioner that the transfer to the entity is properly attributable to the U.S. person's ownership interest in the entity.

Sections 1.679-3 applies to transfers after November 6, 2000.

Section 1.679-4 Exceptions to General Rule

Pursuant to sections 679(a)(1) and (a)(2), § 1.679-4(a) provides the following four exceptions to the general rule of § 1.679-1: (i) transfers to a foreign trust by reason of the death of the transferor; (ii) transfers to a foreign trust described in sections 402(b), 404(a)(4), or 404A; (iii) transfers to a foreign trust that has received a ruling or determination letter, which has been neither revoked nor modified, from the Internal Revenue Service recognizing the trust's tax exempt status under section 501(c)(3); and (iv) transfers to the extent they are for fair market value.

Section 1.679-4(b) provides rules for determining whether a transfer to a

foreign trust is for fair market value. The rules generally follow the rules for determining fair market value under § 1.671-2(e). For purposes of this determination, an interest in the trust is not considered to be property received from the trust. A distribution to a foreign trust with respect to an interest held by such trust in an entity other than a trust or in a trust described in § 301.7701-4(c), (d), or (e) is considered to be a transfer for fair market value. For example, a dividend paid by a U.S. corporation to a foreign trust with respect to the foreign trust's stock ownership in the corporation is not a transfer that is subject to the general rule of section § 1.679-1.

Section 679(a)(3) provides that in determining whether a transfer is for fair market value, obligations received from the trust or certain related persons are not taken into account, except to the extent provided in regulations. As noted above, this provision reflects Congress' concern that certain taxpayers may have attempted to take advantage of the fair market value exception to section 679 by transferring property to a foreign trust in exchange for obligations issued by the trust (or related persons) that might not be repaid. Congress intended Treasury and the IRS to exercise their regulatory authority to consider whether there is a reasonable expectation that an obligation of the trust would be repaid. H.R. Conf. Rep. No. 737, 104th Cong., 2d Sess. 335 (1996).

The proposed regulations, in exercising this authority, follow the approach in Notice 97-34 (1997-2 C.B. 422). The proposed regulations describe the circumstances under which an obligation of a foreign trust (or a person related to that trust) will be treated as a qualified obligation that is taken into account for purposes of determining whether a U.S. transferor received fair market value from a trust in exchange for a transfer by the U.S. transferor. If the U.S. transferor, in exchange for the property transferred, receives an obligation of the trust (or a related person) that is not a qualified obligation, the obligation is considered to have no value for purposes of determining whether the transferor received fair market value.

The term obligation is defined in § 1.679-1(c)(6). Section 1.679-4(d) provides that to be treated as a qualified obligation, an obligation must be reduced to writing by an express written agreement. The obligation must have a term not in excess of five years. For purposes of determining an obligation's term, the obligation's maturity date is the last possible date it can be outstanding under the terms of the

obligation. Accordingly, demand loans and private annuity transactions do not constitute qualified obligations. In addition, all payments on a qualified obligation must be denominated in U.S. dollars. The yield to maturity cannot be less than 100 percent of the applicable Federal rate and cannot be greater than 130 percent of the applicable Federal rate. The U.S. transferor must extend the period for assessment of any income or transfer tax attributable to the transfer and any consequential income tax changes for each year that the obligation is outstanding, to a date not earlier than three years after the maturity date of the obligation. The extension is not necessary if the maturity date of the obligation does not extend beyond the end of the U.S. transferor's taxable year and is paid within such period. Finally, the U.S. transferor must report the status of the loan, including principal and interest payments, on Form 3520 for every year that the loan is outstanding.

Section 1.679-4(d) also incorporates other rules regarding qualified obligations from Notice 97-34. For example, under certain circumstances, the issuance of additional obligations by the foreign trust or a person related to the foreign trust may cause an obligation that had been a qualified obligation to lose such status. Renegotiation of the terms of the loan is treated as a new loan. If an obligation loses its status as a qualified obligation, the U.S. transferor is treated as making a transfer to the trust that may be subject to § 1.679-1. Principal repayments with respect to obligations that are not qualified obligations are taken into account on and after the date of the payment in determining the portion of the trust attributable to the property originally transferred.

The rules of this section generally apply with respect to transfers to foreign trusts after November 6, 2000. Special effective dates, based on the guidance set forth in Notice 97-34, are provided for the rules that apply to obligations.

Section 1.679-5 Pre-immigration Trusts

The 1996 Act added section 679(a)(4) to address the potential abuse of nonresident aliens establishing foreign trusts shortly before becoming U.S. persons. Section 1.679-5 provides that if a nonresident alien individual becomes a U.S. person and the individual has a residency starting date (as determined under section 7701(b)(2)(A)) within 5 years after directly or indirectly transferring property to a foreign trust, the individual is deemed to transfer the property to the trust on the residency

starting date. The amount deemed transferred is the portion of the trust attributable to the property transferred by the individual in the original transfer. Section 1.679-5(b) provides that if the nonresident alien individual is treated under the grantor trust rules as the owner of any portion of the trust and the individual ceases to be so treated, the 5-year period begins on the date the individual ceases to be so treated.

The property deemed transferred to the foreign trust on the residency starting date includes undistributed net income, as defined in section 665(a), attributable to the property transferred. Undistributed net income for periods before the individual's residency starting date is taken into account only for purposes of determining the portion of the trust that is attributable to property transferred.

If an individual is treated as making a deemed transfer pursuant to this provision, the reporting requirements of section 6048 apply to the deemed transfer as of the residency starting date.

The rules of this section apply to persons whose residency starting date is after November 6, 2000.

Section 1.679-6 Outbound Migrations of Domestic Trusts

The proposed regulations implement section 679(a)(5), which addresses the situation where a trust that is a domestic trust becomes a foreign trust. If an individual who is a U.S. person transfers property to a trust that is not a foreign trust, and the trust becomes a foreign trust while the U.S. person is alive, the U.S. individual is treated as a U.S. transferor and is deemed to transfer the property to a foreign trust on the date the domestic trust becomes a foreign trust. The property deemed transferred to the trust when it becomes a foreign trust includes undistributed net income, as defined in section 665(a), attributable to the property previously transferred. Undistributed net income for periods prior to the trust migration is taken into account only for purposes of determining the portion of the trust that is attributable to the property transferred by the U.S. person.

If a U.S. person is treated as making a deemed transfer pursuant to this provision, the reporting requirements of section 6048 apply to the deemed transfer as of the date of the deemed transfer.

The rules of this section apply to trusts that become foreign trusts after November 6, 2000.

Section 1.679-7 Effective Dates

This section of the proposed regulations provides effective dates with respect to §§ 1.679-1 through 1.679-6. These effective dates are discussed above in the context of each respective section. Notwithstanding the effective dates in the proposed regulations, the Internal Revenue Service may apply the effective dates that are applicable to section 679 of the Internal Revenue Code. In addition, the Internal Revenue Service is not restricted from applying general income tax principles to transactions prior to the effective dates of the proposed regulations to determine, for example, that a U.S. person has made a transfer to a foreign trust.

Certain Clarifications Regarding Section 958

The proposed regulations clarify that, under § 1.958-1(b), a person who is treated as the owner of any portion of a trust under section 679 and the other grantor trust rules is treated as the owner of the stock owned by the trust with respect to that portion. This change is merely intended as a clarification of existing law.

Existing § 1.958-2(c)(1)(ii)(b) provides that a person who is treated as the owner of any portion of a trust under sections 671 through 678 is treated as the owner of the stock owned by or for that portion of the trust for purposes of the constructive ownership rules of section 958(b). Because section 679 was not enacted until 1976, it is not referred to in the existing regulations, which were issued in 1966. The proposed regulations clarify that this treatment also applies to persons treated as the owner of any portion of a trust under section 679. This change is merely intended as a clarification of existing law.

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 regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small

Business Administration for comment on its 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 (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 8, 2000, at 10 a.m. in room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

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

Persons that wish to present oral comments at the hearing must submit written comments by November 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 October 18, 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 proposed regulations is Willard W. Yates of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.679-1 also issued under 26 U.S.C. 643(a)(7) and 679(d).
Section 1.679-2 also issued under 26 U.S.C. 643(a)(7) and 679(d).

Section 1.679-3 also issued under 26 U.S.C. 643(a)(7) and 679(d).

Section 1.679-4 also issued under 26 U.S.C. 643(a)(7), 679(a)(3) and 679(d).

Section 1.679-5 also issued under 26 U.S.C. 643(a)(7) and 679(d).

Section 1.679-6 also issued under 26 U.S.C. 643(a)(7) and 679(d). * * *

Par. 2. Sections 1.679-1, 1.679-2, 1.679-3, 1.679-4, 1.679-5, 1.679-6, and 1.679-7 are added under the undesignated center heading "Grantors and Others Treated as Substantial Owners" to read as follows:

§ 1.679-1 U.S. Transferor Treated as Owner of Foreign Trust

(a) *In general.* A U.S. transferor who transfers property to a foreign trust is treated as the owner of the portion of the trust attributable to the property transferred if there is a U.S. beneficiary of any portion of the trust, unless an exception in § 1.679-4 applies to the transfer.

(b) *Interaction with sections 673 through 678.* The rules of this section apply without regard to whether the U.S. transferor retains any power or interest described in sections 673 through 677. If a U.S. transferor would be treated as the owner of a portion of a foreign trust pursuant to the rules of this section and another person would be treated as the owner of the same portion of the trust pursuant to section 678, then the U.S. transferor is treated as the owner and the other person is not treated as the owner.

(c) *Definitions.* The following definitions apply for purposes of this section and §§ 1.679-2 through 1.679-7:

(1) *U.S. transferor.* The term *U.S. transferor* means any U.S. person who makes a transfer (as defined in § 1.679-3) of property to a foreign trust.

(2) *U.S. person.* The term *U.S. person* means a United States person as defined in section 7701(a)(30), a nonresident alien individual who elects under section 6013(g) to be treated as resident of the United States, and an individual who is a dual resident taxpayer within the meaning of § 301.7701(b)-7(a) of this chapter.

(3) *Foreign trust.* Section 7701(a)(31)(B) defines the term *foreign trust*.

(4) *Property.* The term *property* means any property including cash.

(5) *Related person.* A person is a *related person* if, without regard to the transfer at issue, the person is—

(i) A grantor of any portion of the trust (within the meaning of § 1.671-2(e)(1));

(ii) An owner of any portion of the trust under sections 671 through 679;

(iii) A beneficiary of the trust; or

(iv) A person who is related (within the meaning of section 643(i)(2)(B)) to

any grantor, owner or beneficiary of the trust.

(6) *Obligation.* The term *obligation* means any bond, note, debenture, certificate, bill receivable, account receivable, note receivable, open account, or other evidence of indebtedness, and, to the extent not previously described, any annuity contract.

(d) *Examples.* The following examples illustrate the rules of paragraph (a) of this section. In these examples, *A* is a resident alien, *B* is *A*'s son, who is a resident alien, *C* is *A*'s father, who is a resident alien, *D* is *A*'s uncle, who is a nonresident alien, and *FT* is a foreign trust. The examples are as follows:

Example 1. Interaction with section 678. *A* creates and funds *FT*. *FT* may provide for the education of *B* by paying for books, tuition, room and board. In addition, *C* has the power to vest the trust corpus or income in himself within the meaning of section 678(a)(1). Under paragraph (b) of this section, *A* is treated as the owner of the portion of *FT* attributable to the property transferred to *FT* by *A* and *C* is not treated as the owner thereof.

Example 2. U.S. person treated as owner of a portion of FT. *D* creates and funds *FT* for the benefit of *B*. *D* retains a power described in section 676 and § 1.672(f)-3(a)(1). *A* transfers property to *FT*. Under sections 676 and 672(f), *D* is treated as the owner of the portion of *FT* attributable to the property transferred by *D*. Under paragraph (a) of this section, *A* is treated as the owner of the portion of *FT* attributable to the property transferred by *A*.

§ 1.679-2 Trusts treated as having a U.S. beneficiary

(a) *Existence of U.S. beneficiary*—(1) *In general.* The determination of whether a foreign trust has a U.S. beneficiary is made on an annual basis. A foreign trust is treated as having a U.S. beneficiary unless during the taxable year of the U.S. transferor—

(i) No part of the income or corpus of the trust may be paid or accumulated to or for the benefit of, directly or indirectly, a U.S. person; and

(ii) If the trust is terminated at any time during the taxable year, no part of the income or corpus of the trust could be paid to or for the benefit of, directly or indirectly, a U.S. person.

(2) *Benefit to a U.S. person*—(i) *In general.* For purposes of paragraph (a)(1) of this section, income or corpus may be paid or accumulated to or for the benefit of a U.S. person during a taxable year of the U.S. transferor if during that year, directly or indirectly, income may be distributed to, or accumulated for the benefit of, a U.S. person, or corpus may be distributed to, or held for the future benefit of, a U.S. person. This determination is made without regard to

whether income or corpus is actually distributed to a U.S. person during that year, and without regard to whether a U.S. person's interest in the trust income or corpus is contingent on a future event.

(ii) *Certain unexpected beneficiaries.* Notwithstanding paragraph (a)(2)(i) of this section, for purposes of paragraph (a)(1) of this section, a person who is not named as a beneficiary and is not a member of a class of beneficiaries as defined under the trust instrument is not taken into consideration if the U.S. transferor demonstrates to the satisfaction of the Commissioner that the person's contingent interest in the trust is so remote as to be negligible. The preceding sentence does not apply with respect to persons to whom distributions could be made pursuant to a grant of discretion to the trustee or any other person. A class of beneficiaries generally does not include heirs who will benefit from the trust under the laws of intestate succession in the event that the named beneficiaries (or members of the named class) have all deceased (whether or not stated as a named class in the trust instrument).

(iii) *Examples.* The following examples illustrate the rules of paragraphs (a)(1) and (a)(2) of this section. In these examples, *A* is a resident alien, *B* is *A*'s son, who is a resident alien, *C* is *A*'s daughter, who is a nonresident alien, and *FT* is a foreign trust. The examples are as follows:

Example 1. Distribution of income to U.S. person. *A* transfers property to *FT*. The trust instrument provides that all trust income is to be distributed currently to *B*. Under paragraph (a)(1) of this section, *FT* is treated as having a U.S. beneficiary.

Example 2. Income accumulation for the benefit of a U.S. person. In 2001, *A* transfers property to *FT*. The trust instrument provides that from 2001 through 2010, the trustee of *FT* may distribute trust income to *C* or may accumulate the trust income. The trust instrument further provides that in 2011, the trust will terminate and the trustee may distribute the trust assets to either or both of *B* and *C*, in the trustee's discretion. If the trust terminates unexpectedly prior to 2011, all trust assets must be distributed to *C*. Because it is possible that income may be accumulated in each year, and that the accumulated income ultimately may be distributed to *B*, a U.S. person, under paragraph (a)(1) of this section *FT* is treated as having a U.S. beneficiary during each of *A*'s tax years from 2001 through 2011. This result applies even though no U.S. person may receive distributions from the trust during the tax years 2001 through 2010.

Example 3. Corpus held for the benefit of a U.S. person. The facts are the same as in *Example 2*, except that from 2001 through 2011, all trust income must be distributed to *C*. In 2011, the trust will terminate and the trustee may distribute the trust corpus to

either or both of *B* and *C*, in the trustee's discretion. If the trust terminates unexpectedly prior to 2011, all trust corpus must be distributed to *C*. Because during each of *A*'s tax years from 2001 through 2011 trust corpus is held for possible future distribution to *B*, a U.S. person, under paragraph (a)(1) of this section *FT* is treated as having a U.S. beneficiary during each of those years. This result applies even though no U.S. person may receive distributions from the trust during the tax years 2001 through 2010.

Example 4. Distribution upon U.S. transferor's death. *A* transfers property to *FT*. The trust instrument provides that all trust income must be distributed currently to *C* and, upon *A*'s death, the trust will terminate and the trustee may distribute the trust corpus to either or both of *B* and *C*. Because *B* may receive a distribution of corpus upon the termination of *FT*, and *FT* could terminate in any year, *FT* is treated as having a U.S. beneficiary in the year of the transfer and in subsequent years.

Example 5. Distribution after U.S. transferor's death. The facts are the same as in *Example 4*, except the trust instrument provides that the trust will not terminate until the year following *A*'s death. Upon termination, the trustee may distribute the trust assets to either or both of *B* and *C*, in the trustee's discretion. All trust assets are invested in the stock of *X*, a foreign corporation, and *X* makes no distributions to *FT*. Although no U.S. person may receive a distribution until the year after *A*'s death, and *FT* has no realized income during any year of its existence, during each year in which *A* is living corpus may be held for future distribution to *B*, a U.S. person. Thus, under paragraph (a)(1) of this section *FT* is treated as having a U.S. beneficiary during each of *A*'s tax years from 2001 through the year of *A*'s death.

Example 6. Constructive benefit to U.S. person. *A* transfers property to *FT*. The trust instrument provides that no income or corpus may be paid directly to a U.S. person. However, the trust instrument provides that trust corpus may be used to satisfy *B*'s legal obligations to a third party by making a payment directly to the third party. Under paragraphs (a)(1) and (2) of this section, *FT* is treated as having a U.S. beneficiary.

Example 7. U.S. person with negligible contingent interest. *A* transfers property to *FT*. The trust instrument provides that all income is to be distributed currently to *C*, and upon *C*'s death, all corpus is to be distributed to whomever of *C*'s three children is then living. All of *C*'s children are nonresident aliens. Under the laws of intestate succession that would apply to *FT*, if all of *C*'s children are deceased at the time of *C*'s death, the corpus would be distributed to *A*'s heirs. *A*'s living relatives at the time of the transfer consist solely of two brothers and two nieces, all of whom are nonresident aliens, and two first cousins, one of whom, *E*, is a U.S. citizen. Although it is possible under certain circumstances that *E* could receive a corpus distribution under the applicable laws of intestate succession, for each year the trust is in existence *A* is able to demonstrate to the satisfaction of the

Commissioner under paragraph (a)(2)(ii) of this section that *E*'s contingent interest in *FT* is so remote as to be negligible. Provided that paragraph (a)(4) of this section does not require a different result, *FT* is not treated as having a U.S. beneficiary.

Example 8. U.S. person with non-negligible contingent interest. *A* transfers property to *FT*. The trust instrument provides that all income is to be distributed currently to *D*, *A*'s uncle, who is a nonresident alien, and upon *A*'s death, the corpus is to be distributed to *D* if he is then living. Under the laws of intestate succession that would apply to *FT*, *B* and *C* would share equally in the trust corpus if *D* is not living at the time of *A*'s death. *A* is unable to demonstrate to the satisfaction of the Commissioner that *B*'s contingent interest in the trust is so remote as to be negligible. Under paragraph (a)(2)(ii) of this section, *FT* is treated as having a U.S. beneficiary as of the year of the transfer.

Example 9. U.S. person as member of class of beneficiaries. *A* transfers property to *FT*. The trust instrument provides that all income is to be distributed currently to *D*, *A*'s uncle, who is a nonresident alien, and upon *A*'s death, the corpus is to be distributed to *D* if he is then living. If *D* is not then living, the corpus is to be distributed to *D*'s descendants. *D*'s grandson, *E*, is a resident alien. Under paragraph (a)(2)(ii) of this section, *FT* is treated as having a U.S. beneficiary as of the year of the transfer.

Example 10. Trustee's discretion in choosing beneficiaries. *A* transfers property to *FT*. The trust instrument provides that the trustee may distribute income and corpus to, or accumulate income for the benefit of, any person who is pursuing the academic study of ancient Greek, in the trustee's discretion. Because it is possible that a U.S. person will receive distributions of income or corpus, or will have income accumulated for his benefit, *FT* is treated as having a U.S. beneficiary. This result applies even if, during a tax year, no distributions or accumulations are actually made to or for the benefit of a U.S. person. *A* may not invoke paragraph (a)(2)(ii) of this section because a U.S. person could benefit pursuant to a grant of discretion in the trust instrument.

Example 11. Appointment of remainder beneficiary. *A* transfers property to *FT*. The trust instrument provides that the trustee may distribute current income to *C*, or may accumulate income, and, upon termination of the trust, trust assets are to be distributed to *C*. However, the trust instrument further provides that *D*, *A*'s uncle, may appoint a different remainder beneficiary. Because it is possible that a U.S. person could be named as the remainder beneficiary, and because corpus could be held in each year for the future benefit of that U.S. person, *FT* is treated as having a U.S. beneficiary for each year.

Example 12. Trust not treated as having a U.S. beneficiary. *A* transfers property to *FT*. The trust instrument provides that the trustee may distribute income and corpus to, or accumulate income for the benefit of *C*. Upon termination of the trust, all income and corpus must be distributed to *C*. Assume that paragraph (a)(4) of this section is not applicable under the facts and circumstances

and that *A* establishes to the satisfaction of the Commissioner under paragraph (a)(2)(ii) of this section that no U.S. persons are reasonably expected to benefit from the trust. Because no part of the income or corpus of the trust may be paid or accumulated to or for the benefit of, either directly or indirectly, a U.S. person, and if the trust is terminated no part of the income or corpus of the trust could be paid to or for the benefit of, either directly or indirectly, a U.S. person, *FT* is not treated as having a U.S. beneficiary.

Example 13. U.S. beneficiary becomes non-U.S. person. In 2001, *A* transfers property to *FT*. The trust instrument provides that, as long as *B* remains a U.S. resident, no distributions of income or corpus may be made from the trust to *B*. The trust instrument further provides that if *B* becomes a nonresident alien, distributions of income (including previously accumulated income) and corpus may be made to him. If *B* remains a U.S. resident at the time of *FT*'s termination, all accumulated income and corpus is to be distributed to *C*. In 2007, *B* becomes a nonresident alien and remains so thereafter. Because income may be accumulated during the years 2001 through 2007 for the benefit of a person who is a U.S. person during those years, *FT* is treated as having a U.S. beneficiary under paragraph (a)(1) of this section during each of those years. This result applies even though *B* cannot receive distributions from *FT* during the years he is a resident alien and even though *B* might remain a resident alien who is not entitled to any distribution from *FT*. Provided that paragraph (a)(4) of this section does not require a different result and that *A* establishes to the satisfaction of the Commissioner under paragraph (a)(2)(ii) of this section that no other U.S. persons are reasonably expected to benefit from the trust, *FT* is not treated as having a U.S. beneficiary under paragraph (a)(1) of this section during tax years after 2007.

(3) **Changes in beneficiary's status—(i) In general.** For purposes of paragraph (a)(1) of this section, the possibility that a person that is not a U.S. person could become a U.S. person will not cause that person to be treated as a U.S. person for purposes of paragraph (a)(1) of this section until the tax year of the U.S. transferor in which that individual actually becomes a U.S. person. However, if a person who is not a U.S. person becomes a U.S. person for the first time more than 5 years after the date of a transfer to the foreign trust by a U.S. transferor, that person is not treated as a U.S. person for purposes of applying paragraph (a)(1) of this section with respect to that transfer.

(ii) **Examples.** The following examples illustrate the rules of paragraph (a)(3) of this section. In these examples, *A* is a resident alien, *B* is *A*'s son, who is a resident alien, *C* is *A*'s daughter, who is a nonresident alien, and *FT* is a foreign trust. The examples are as follows:

Example 1. Non-U.S. beneficiary becomes U.S. person. In 2001, *A* transfers property to *FT*. The trust instrument provides that all income is to be distributed currently to *C* and that, upon the termination of *FT*, all corpus is to be distributed to *C*. Assume that paragraph (a)(4) of this section is not applicable under the facts and circumstances and that *A* establishes to the satisfaction of the Commissioner under paragraph (a)(2)(ii) of this section that no U.S. persons are reasonably expected to benefit from the trust. Under paragraph (a)(3)(i) of this section, *FT* is not treated as having a U.S. beneficiary during the tax years of *A* in which *C* remains a nonresident alien. If *C* first becomes a resident alien in 2004, *FT* is treated as having a U.S. beneficiary commencing in that year under paragraph (a)(3) of this section. See paragraph (c) of this section regarding the treatment of *A* upon *FT*'s acquisition of a U.S. beneficiary.

Example 2. Non-U.S. beneficiary becomes U.S. person more than 5 years after transfer. The facts are the same as in Example 1, except *C* first becomes a resident alien in 2007. *FT* is treated as not having a U.S. beneficiary under paragraph (a)(3)(i) of this section with respect to the property transfer. However, if *C* had previously been a U.S. person during any prior period, the 5-year exception in paragraph (a)(3)(i) of this section would not apply in 2007 because it would not have been the first time *C* became a U.S. person.

(4) **General rules—(i) Records and documents.** Even if, based on the terms of the trust instrument, a foreign trust is not treated as having a U.S. beneficiary within the meaning of paragraph (a)(1) of this section, the trust may nevertheless be treated as having a U.S. beneficiary pursuant to paragraph (a)(1) of this section based on the following—

- (A) All written and oral agreements and understandings relating to the trust;
- (B) Memoranda or letters of wishes;
- (C) All records that relate to the actual distribution of income and corpus; and
- (D) All other documents that relate to the trust, whether or not of any purported legal effect.

(ii) **Additional factors.** For purposes of determining whether a foreign trust is treated as having a U.S. beneficiary within the meaning of paragraph (a)(1) of this section, the following additional factors are taken into account—

(A) If the terms of the trust instrument allow the trust to be amended to benefit a U.S. person, all potential benefits that could be provided to a U.S. person pursuant to an amendment must be taken into account;

(B) If the terms of the trust instrument do not allow the trust to be amended to benefit a U.S. person, but the law applicable to a foreign trust may require payments or accumulations of income or corpus to or for the benefit of a U.S. person (by judicial reformation or otherwise), all potential benefits that

could be provided to a U.S. person pursuant to the law must be taken into account, unless the U.S. transferor demonstrates to the satisfaction of the Commissioner that the law is not reasonably expected to be applied or invoked under the facts and circumstances; and

(C) If the parties to the trust ignore the terms of the trust instrument, or if it is reasonably expected that they will do so, all benefits that have been, or are reasonably expected to be, provided to a U.S. person must be taken into account.

(iii) *Examples.* The following examples illustrate the rules of paragraph (a)(4) of this section. In these examples, *A* is a resident alien, *B* is *A*'s son, who is a resident alien, *C* is *A*'s daughter, who is a nonresident alien, and *FT* is a foreign trust. The examples are as follows:

Example 1. Amendment pursuant to local law. *A* creates and funds *FT* for the benefit of *C*. The terms of *FT* (which, according to the trust instrument, cannot be amended) provide that no part of the income or corpus of *FT* may be paid or accumulated during the taxable year to or for the benefit of any U.S. person, either during the existence of *FT* or at the time of its termination. However, pursuant to the applicable foreign law, *FT* can be amended to provide for additional beneficiaries, and there is an oral understanding between *A* and the trustee that *B* can be added as a beneficiary. Under paragraphs (a)(1) and (a)(4)(ii)(B) of this section, *FT* is treated as having a U.S. beneficiary.

Example 2. Actions in violation of the terms of the trust. *A* transfers property to *FT*. The trust instrument provides that no U.S. person can receive income or corpus from *FT* during the term of the trust or at the termination of *FT*. Notwithstanding the terms of the trust instrument, a letter of wishes directs the trustee of *FT* to provide for the educational needs of *B*, who is about to begin college. The letter of wishes contains a disclaimer to the effect that its contents are only suggestions and recommendations and that the trustee is at all times bound by the terms of the trust as set forth in the trust instrument. Under paragraphs (a)(1) and (a)(4)(ii)(C) of this section, *FT* is treated as having a U.S. beneficiary.

(b) *Indirect U.S. beneficiaries—(1) Certain foreign entities.* For purposes of paragraph (a)(1) of this section, an amount is treated as paid or accumulated to or for the benefit of a U.S. person if the amount is paid to or accumulated for the benefit of—

(i) A controlled foreign corporation, as defined in section 957(a);

(ii) A foreign partnership, if a U.S. person is a partner of such partnership; or

(iii) A foreign trust or estate, if such trust or estate has a U.S. beneficiary

(within the meaning of paragraph (a)(1) of this section).

(2) *Other indirect beneficiaries.* For purposes of paragraph (a)(1) of this section, an amount is treated as paid or accumulated to or for the benefit of a U.S. person if the amount is paid to or accumulated for the benefit of a U.S. person through an intermediary, such as an agent or nominee, or by any other means where a U.S. person may obtain an actual or constructive benefit.

(3) *Examples.* The following examples illustrate the rules of this paragraph (b). Unless otherwise noted, *A* is a U.S. resident alien. *B* is *A*'s son and is a resident alien. *FT* is a foreign trust. The examples are as follows:

Example 1. Trust benefitting foreign corporation. *A* transfers property to *FT*. The beneficiary of *FT* is *FC*, a foreign corporation. *FC* has outstanding solely 100 shares of common stock. *B* owns 49 shares of the *FC* stock and *FC2*, also a foreign corporation, owns the remaining 51 shares. *FC2* has outstanding solely 100 shares of common stock. *B* owns 49 shares of *FC2* and nonresident alien individuals own the remaining 51 *FC2* shares. *FC* is a controlled foreign corporation (as defined in section 957(a), after the application of section 958(a)(2)). Under paragraphs (a)(1) and (b)(1)(i) of this section, *FT* is treated as having a U.S. beneficiary.

Example 2. Trust benefitting another trust. *A* transfers property to *FT*. The terms of *FT* permit current distributions of income to *B*. *A* transfers property to another foreign trust, *FT2*. The terms of *FT2* provide that no U.S. person can benefit either as to income or corpus, but permit current distributions of income to *FT*. Under paragraph (a)(1) of this section, *FT* is treated as having a U.S. beneficiary and, under paragraphs (a)(1) and (b)(1)(iii) of this section, *FT2* is treated as having a U.S. beneficiary.

Example 3. Trust benefitting another trust after transferor's death. *A* transfers property to *FT*. The terms of *FT* require that all income from *FT* be accumulated during *A*'s lifetime. In the year following *A*'s death, a share of *FT* is to be distributed to *FT2*, another foreign trust, for the benefit of *B*. Under paragraphs (a)(1) and (b)(1)(iii) of this section, *FT* is treated as having a U.S. beneficiary beginning with the year of *A*'s transfer of property to *FT*.

Example 4. Indirect benefit through use of debit card. *A* transfers property to *FT*. The trust instrument provides that no U.S. person can benefit either as to income or corpus. However, *FT* maintains an account with *FB*, a foreign bank, and *FB* issues a debit card to *B* against the account maintained by *FT* and *B* is allowed to make withdrawals. Under paragraphs (a)(1) and (b)(2) of this section, *FT* is treated as having a U.S. beneficiary.

Example 5. Other indirect benefit. *A* transfers property to *FT*. *FT* is administered by *FTC*, a foreign trust company. *FTC* forms *IBC*, an international business corporation formed under the laws of a foreign jurisdiction. *IBC* is the beneficiary of *FT*. *IBC* maintains an account with *FB*, a foreign

bank. *FB* issues a debit card to *B* against the account maintained by *IBC* and *B* is allowed to make withdrawals. Under paragraphs (a)(1) and (b)(2) of this section, *FT* is treated as having a U.S. beneficiary.

(c) *Treatment of U.S. transferor upon foreign trust's acquisition or loss of U.S. beneficiary—(1) Trusts acquiring a U.S. beneficiary.* If a foreign trust to which a U.S. transferor has transferred property is not treated as having a U.S. beneficiary (within the meaning of paragraph (a) of this section) for any taxable year of the U.S. transferor, but the trust is treated as having a U.S. beneficiary (within the meaning of paragraph (a) of this section) in any subsequent taxable year, the U.S. transferor is treated as having additional income in the first such taxable year of the U.S. transferor in which the trust is treated as having a U.S. beneficiary. The amount of the additional income is equal to the trust's undistributed net income, as defined in section 665(a), at the end of the U.S. transferor's immediately preceding taxable year and is subject to the rules of section 668, providing for an interest charge on accumulation distributions from foreign trusts.

(2) *Trusts ceasing to have a U.S. beneficiary.* If, for any taxable year of a U.S. transferor, a foreign trust that has received a transfer of property from the U.S. transferor ceases to be treated as having a U.S. beneficiary, the U.S. transferor ceases to be treated as the owner of the portion of the trust attributable to the transfer beginning in the first taxable year following the last taxable year of the U.S. transferor during which the trust was treated as having a U.S. beneficiary (unless the U.S. transferor is treated as an owner thereof pursuant to sections 673 through 677). The U.S. transferor is treated as making a transfer of property to the foreign trust on the first day of the first taxable year following the last taxable year of the U.S. transferor during which the trust was treated as having a U.S. beneficiary. The amount of the property deemed to be transferred to the trust is the portion of the trust attributable to the prior transfer to which paragraph (a)(1) of this section applied. For rules regarding the recognition of gain on transfers to foreign trusts, see section 684.

(3) *Examples.* The rules of this paragraph (c) are illustrated by the following examples. *A* is a U.S. resident alien, *B* is *A*'s son, and *FT* is a foreign trust. The examples are as follows:

Example 1. Trust acquiring U.S. beneficiary. (i) In 2001, *A* transfers stock with a fair market value of \$100,000 to *FT*. The stock has an adjusted basis of \$50,000 at the time of the transfer. The trust instrument

provides that income may be paid currently to, or accumulated for the benefit of, *B* and that, upon the termination of the trust, all income and corpus is to be distributed to *B*. At the time of the transfer, *B* is a nonresident alien. *A* is not treated as the owner of any portion of *FT* under sections 671 through 677. *FT* accumulates a total of \$30,000 of income during the taxable years 2001 through 2003. In 2004, *B* moves to the United States and becomes a resident alien. Assume paragraph (a)(4) of this section is not applicable under the facts and circumstances.

(ii) Under paragraph (c)(1) of this section, *A* is treated as receiving an accumulation distribution in the amount of \$30,000 in 2004 and immediately transferring that amount back to the trust. The accumulation distribution is subject to the rules of section 668, providing for an interest charge on accumulation distributions.

(iii) Under paragraphs (a) (1) and (3) of this section, beginning in 2005, *A* is treated as the owner of the portion of *FT* attributable to the stock transferred by *A* to *FT* in 2001 (which includes the portion attributable to the accumulated income deemed to be retransferred in 2004).

Example 2. Trust ceasing to have U.S. beneficiary. (i) The facts are the same as in **Example 1**. In 2008, *B* becomes a nonresident alien. On the date *B* becomes a nonresident alien, the stock transferred by *A* to *FT* in 2001 has a fair market value of \$125,000 and an adjusted basis of \$50,000.

(ii) Under paragraph (c)(2) of this section, beginning in 2009, *FT* is not treated as having a U.S. beneficiary, and *A* is not treated as the owner of the portion of the trust attributable to the prior transfer of stock. For rules regarding the recognition of gain on the termination of ownership status, see section 684.

§ 1.679-3 Transfers.

(a) *In general.* A transfer means a direct, indirect, or constructive transfer.

(b) *Transfers by certain trusts—(1) In general.* If any portion of a trust is treated as owned by a U.S. person, a transfer of property from that portion of the trust to a foreign trust is treated as a transfer from the owner of that portion to the foreign trust.

(2) *Example.* The following example illustrates this paragraph (b):

Example. In 2001, *A*, a U.S. citizen, creates and funds *DT*, a domestic trust. *A* has the power to revest absolutely in himself the title to the property in *DT* and is treated as the owner of *DT* pursuant to section 676. In 2004, *DT* transfers property to *FT*, a foreign trust. *A* is treated as having transferred the property to *FT* in 2004 for purposes of this section.

(c) *Indirect transfers—(1) Principal purpose of tax avoidance.* A transfer to a foreign trust by any person (intermediary) to whom a U.S. person transfers property is treated as an indirect transfer by a U.S. person to the foreign trust if such transfer is made pursuant to a plan one of the principal

purposes of which is the avoidance of United States tax.

(2) *Principal purpose of tax avoidance deemed to exist.* For purposes of paragraph (c)(1) of this section, a transfer is deemed to have been made pursuant to a plan one of the principal purposes of which was the avoidance of United States tax if—

(i) The U.S. person is related (within the meaning of paragraph (c)(4) of this section) to a beneficiary of the foreign trust, or has another relationship with a beneficiary of the foreign trust that establishes a reasonable basis for concluding that the U.S. transferor would make a transfer to the foreign trust; and

(ii) The U.S. person cannot demonstrate to the satisfaction of the Commissioner that—

(A) The intermediary has a relationship with a beneficiary of the foreign trust that establishes a reasonable basis for concluding that the intermediary would make a transfer to the foreign trust;

(B) The intermediary acted independently of the U.S. person;

(C) The intermediary is not an agent of the U.S. person under generally applicable United States agency principles; and

(D) The intermediary timely complied with the reporting requirements of section 6048, if applicable.

(3) *Effect of disregarding intermediary—(i) In general.* Except as provided in paragraph (c)(3)(ii) of this section, if a transfer is treated as an indirect transfer pursuant to paragraph (c)(1) of this section, then the intermediary is treated as an agent of the U.S. person, and the property is treated as transferred to the foreign trust by the U.S. person in the year the property is transferred, or made available, by the intermediary to the foreign trust. The fair market value of the property transferred is determined as of the date of the transfer by the intermediary to the foreign trust.

(ii) *Special rule.* If the Commissioner determines, or if the taxpayer can demonstrate to the satisfaction of the Commissioner, that the intermediary is an agent of the foreign trust under generally applicable United States agency principles, the property will be treated as transferred to the foreign trust in the year the U.S. person transfers the property to the intermediary. The fair market value of the property transferred will be determined as of the date of the transfer by the U.S. person to the intermediary.

(iii) *Effect on intermediary.* If a transfer of property is treated as an indirect transfer under paragraph (c)(1)

of this section, the intermediary is not treated as having transferred the property to the foreign trust.

(4) *Related parties.* For purposes of this paragraph (c), a U.S. transferor is treated as related to a U.S. beneficiary of a foreign trust if the U.S. transferor and the beneficiary are related for purposes of section 643(i)(2)(B), with the following modifications—

(i) For purposes of applying section 267 (other than section 267(f)) and section 707(b)(1), “at least 10 percent” is used instead of “more than 50 percent” each place it appears; and

(ii) The principles of section 267(b)(10), using “at least 10 percent” instead of “more than 50 percent,” apply to determine whether two corporations are related.

(5) *Examples.* The rules of this paragraph (c) are illustrated by the following examples:

Example 1. Principal purpose of tax avoidance. *A*, a U.S. citizen, creates and funds *FT*, a foreign trust, for the benefit of *A*'s children, who are U.S. citizens. In 2004, *A* decides to transfer an additional 1000X to the foreign trust. Pursuant to a plan with a principal purpose of avoiding the application of section 679, *A* transfers 1000X to *I*, a foreign person. *I* subsequently transfers 1000X to *FT*. Under paragraph (c)(1) of this section, *A* is treated as having made a transfer of 1000X to *FT*.

Example 2. U.S. person unable to demonstrate that intermediary acted independently. *A*, a U.S. citizen, creates and funds *FT*, a foreign trust, for the benefit of *A*'s children, who are U.S. citizens. On July 1, 2004, *A* transfers XYZ stock to *D*, *A*'s uncle, who is a nonresident alien. *D* immediately sells the XYZ stock and uses the proceeds to purchase ABC stock. On January 1, 2007, *D* transfers the ABC stock to *FT*. *A* is unable to demonstrate to the satisfaction of the Commissioner, pursuant to paragraph (c)(2) of this section, that *D* acted independently of *A* in making the transfer to *FT*. Under paragraph (c)(1) of this section, *A* is treated as having transferred the ABC stock to *FT*. Under paragraph (c)(3) of this section, *D* is treated as an agent of *A*, and the transfer is deemed to have been made on January 1, 2007.

Example 3. Indirect loan to foreign trust. *A*, a U.S. citizen, previously created and funded *FT*, a foreign trust, for the benefit of *A*'s children, who are U.S. citizens. On July 1, 2004, *A* deposits 500X with *FB*, a foreign bank. On January 1, 2005, *FB* loans 450X to *FT*. *A* is unable to demonstrate to the satisfaction of the Commissioner, pursuant to paragraph (c)(2) of this section, that *FB* has a relationship with *FT* that establishes a reasonable basis for concluding that *FB* would make a loan to *FT* or that *FB* acted independently of *A* in making the loan. Under paragraph (c)(1) of this section, *A* is deemed to have transferred 450X directly to *FT* on January 1, 2005. Under paragraph (c)(3) of this section, *FB* is treated as an agent of *A*. For possible exceptions with respect to

qualified obligations of the trust, see § 1.679-4.

Example 4. Loan to foreign trust prior to deposit of funds in foreign bank. The facts are the same as in *Example 3*, except that *A* makes the 500X deposit with *FB* on January 2, 2005, the day after *FB* makes the loan to *FT*. The result is the same as in *Example 3*.

(d) *Constructive transfers*—(1) *In general.* For purposes of paragraph (a) of this section, a constructive transfer includes any assumption or satisfaction of a foreign trust's obligation to a third party.

(2) *Examples.* The rules of this paragraph (d) are illustrated by the following examples. In each example, *A* is a U.S. citizen and *FT* is a foreign trust. The examples are as follows:

Example 1. Payment of debt of foreign trust. *FT* owes 1000X to *Y*, an unrelated foreign corporation, for the performance of services by *Y* for *FT*. In satisfaction of *FT*'s liability to *Y*, *A* transfers to *Y* property with a fair market value of 1000X. Under paragraph (d)(1) of this section, *A* is treated as having made a constructive transfer of the property to *FT*.

Example 2. Assumption of liability of foreign trust. *FT* owes 1000X to *Y*, an unrelated foreign corporation, for the performance of services by *Y* for *FT*. *A* assumes *FT*'s liability to pay *Y*. Under paragraph (d)(1) of this section, *A* is treated as having made a constructive transfer of property with a fair market value of 1000X to *FT*.

(e) *Guarantee of trust obligations*—(1) *In general.* If a foreign trust borrows money or other property from any person who is not a related person (within the meaning of § 1.679-1(c)(5)) with respect to the trust (lender) and a U.S. person (U.S. guarantor) that is a related person with respect to the trust guarantees (within the meaning of paragraph (e)(4) of this section) the foreign trust's obligation, the U.S. guarantor is treated for purposes of this section as a U.S. transferor that has made a transfer to the trust on the date of the guarantee in an amount determined under paragraph (e)(2) of this section. To the extent this paragraph causes the U.S. guarantor to be treated as having made a transfer to the trust, a lender that is a U.S. person shall not be treated as having transferred that amount to the foreign trust.

(2) *Amount transferred.* The amount deemed transferred by a U.S. guarantor described in paragraph (e)(1) of this section is the guaranteed portion of the adjusted issue price of the obligation (within the meaning of § 1.1275-1(b)) plus any accrued but unpaid qualified stated interest (within the meaning of § 1.1273-1(c)).

(3) *Principal repayments.* If a U.S. person is treated under this paragraph

(d) as having made a transfer by reason of the guarantee of an obligation, payments of principal to the lender by the foreign trust with respect to the obligation are taken into account on and after the date of the payment in determining the portion of the trust attributable to the property deemed transferred by the U.S. guarantor.

(4) *Guarantee.* For purposes of this section, the term guarantee—

(i) Includes any arrangement under which a person, directly or indirectly, assures, on a conditional or unconditional basis, the payment of another's obligation;

(ii) Encompasses any form of credit support, and includes a commitment to make a capital contribution to the debtor or otherwise maintain its financial viability; and

(iii) Includes an arrangement reflected in a comfort letter, regardless of whether the arrangement gives rise to a legally enforceable obligation. If an arrangement is contingent upon the occurrence of an event, in determining whether the arrangement is a guarantee, it is assumed that the event has occurred.

(5) *Examples.* The rules of this paragraph (e) are illustrated by the following examples. In all of the examples, *A* is a U.S. resident and *FT* is a foreign trust. The examples are as follows:

Example 1. Foreign lender. *X*, a foreign corporation, loans 1000X of cash to *FT* in exchange for *FT*'s obligation to repay the loan. *A* guarantees the repayment of 600X of *FT*'s obligation. Under paragraph (e)(2) of this section, *A* is treated as having transferred 600X to *FT*.

Example 2. Unrelated U.S. lender. The facts are the same as in *Example 1*, except *X* is a U.S. person that is not a related person within the meaning of § 1.679-1(c)(5). The result is the same as in *Example 1*.

(f) *Transfers to entities owned by a foreign trust*—(1) *General rule.* If a U.S. person is a related person (as defined in § 1.679-1(c)(5)) with respect to a foreign trust, any transfer of property by the U.S. person to an entity in which the foreign trust holds an ownership interest is treated as a transfer of such property by the U.S. person to the foreign trust followed by a transfer of the property from the foreign trust to the entity owned by the foreign trust, unless the U.S. person demonstrates to the satisfaction of the Commissioner that the transfer to the entity is properly attributable to the U.S. person's ownership interest in the entity.

(2) *Examples.* The rules of this paragraph (f) are illustrated by the following examples. In all of the examples, *A* is a U.S. citizen, *FT* is a

foreign trust, and *FC* is a foreign corporation. The examples are as follows:

Example 1. *A* creates and funds *FT*, which is treated as having a U.S. beneficiary under § 1.679-2. *FT* owns all of the outstanding stock of *FC*. *A* transfers property directly to *FC*. Because *FT* is the sole shareholder of *FC*, *A* is unable to demonstrate to the satisfaction of the Commissioner that the transfer is properly attributable to *A*'s ownership interest in *FC*. Accordingly, under this paragraph (f), *A* is treated as having transferred the property to *FT*, followed by a transfer of such property by *FT* to *FC*. Under § 1.679-1(a), *A* is treated as the owner of the portion of *FT* attributable to the property treated as transferred directly to *FT*. Under § 1.367(a)-1T(c)(4)(ii), the transfer of property by *FT* to *FC* is treated as a transfer of the property by *A* to *FC*.

Example 2. The facts are the same as in *Example 1*, except that *FT* is not treated as having a U.S. beneficiary under § 1.679-2. Under this paragraph (f), *A* is treated as having transferred the property to *FT*, followed by a transfer of such property by *FT* to *FC*. *A* is not treated as the owner of *FT* for purposes of § 1.679-1(a). For rules regarding the recognition of gain on the transfer, see section 684.

Example 3. *A* creates and funds *FT*. *FC* has outstanding solely 100 shares of common stock. *FT* owns 50 shares of *FC* stock, and *A* owns the remaining 50 shares. On July 1, 2001, *FT* and *A* each transfer 1000X to *FC*. *A* is able to demonstrate to the satisfaction of the Commissioner that *A*'s transfer to *FC* is properly attributable to *A*'s ownership interest in *FC*. Accordingly, under this paragraph (f), *A*'s transfer to *FC* is not treated as a transfer to *FT*.

§ 1.679-4 Exceptions to general rule.

(a) *In general.* Section 1.679-1 does not apply to—

(1) Any transfer of property to a foreign trust by reason of the death of the transferor;

(2) Any transfer of property to a foreign trust described in sections 402(b), 404(a)(4), or 404A;

(3) Any transfer of property to a foreign trust that has received a ruling or determination letter, which has been neither revoked nor modified, from the Internal Revenue Service recognizing the trust's tax exempt status under section 501(c)(3); and

(4) Any transfer of property to a foreign trust to the extent the transfer is for fair market value.

(b) *Transfers for fair market value*—(1) *In general.* For purposes of this section, a transfer is for fair market value only to the extent of the value of property received from the trust, services rendered by the trust, or the right to use property of the trust. For example, rents, royalties, interest, and compensation paid to a trust are transfers for fair market value only to

the extent that the payments reflect an arm's length price for the use of the property of, or for the services rendered by, the trust. For purposes of this determination, an interest in the trust is not property received from the trust. For purposes of this section, a distribution to a trust with respect to an interest held by such trust in an entity other than a trust or an interest in certain investment trusts described in § 301.7701-4(c) of this chapter, liquidating trusts described in § 301.7701-4(d) of this chapter, or environmental remediation trusts described in § 301.7701-4(e) of this chapter is considered to be a transfer for fair market value.

(2) *Special rule*—(i) *Transfers for partial consideration.* For purposes of this section, if a person transfers property to a foreign trust in exchange for property having a fair market value that is less than the fair market value of the property transferred, the exception in paragraph (a)(4) of this section applies only to the extent of the fair market value of the property received.

(ii) *Example.* This paragraph (b) is illustrated by the following example:

Example. A, a U.S. citizen, transfers property that has a fair market value of 1000X to *FT*, a foreign trust, in exchange for 600X of cash. Under this paragraph (b), § 1.679-1 applies with respect to the transfer of 400X (1000X less 600X) to *FT*.

(c) *Certain obligations not taken into account.* Solely for purposes of this section, in determining whether a transfer by a U.S. transferor that is a related person (as defined in § 1.679-1(c)(5)) with respect to the foreign trust is for fair market value, any obligation (as defined in § 1.679-1(c)(6)) of the trust or a related person (as defined in § 1.679-1(c)(5)) that is not a qualified obligation within the meaning of paragraph (d)(1) of this section shall not be taken into account.

(d) *Qualified obligations*—(1) *In general.* For purposes of this section, an obligation is treated as a qualified obligation only if—

(i) The obligation is reduced to writing by an express written agreement;

(ii) The term of the obligation does not exceed five years (for purposes of determining the term of an obligation, the obligation's maturity date is the last possible date that the obligation can be outstanding under the terms of the obligation);

(iii) All payments on the obligation are denominated in U.S. dollars;

(iv) The yield to maturity is not less than 100 percent of the applicable Federal rate and not greater than 130 percent of the applicable Federal rate

(the applicable Federal rate for an obligation is the applicable Federal rate in effect under section 1274(d) for the day on which the obligation is issued, as published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter));

(v) The U.S. transferor extends the period for assessment of any income or transfer tax attributable to the transfer and any consequential income tax changes for each year that the obligation is outstanding, to a date not earlier than three years after the maturity date of the obligation (this extension is not necessary if the maturity date of the obligation does not extend beyond the end of the U.S. transferor's taxable year and is paid within such period); when properly executed and filed, such an agreement is deemed to be consented to for purposes of § 301.6501(c)-1(d) of this chapter; and

(vi) The U.S. transferor reports the status of the loan, including principal and interest payments, on Form 3520 for every year that the loan is outstanding.

(2) *Additional loans.* If, while the original obligation is outstanding, the U.S. transferor or a person related to the trust (within the meaning of § 1.679-1(c)(5)) directly or indirectly obtains another obligation issued by the trust, or if the U.S. transferor directly or indirectly obtains another obligation issued by a person related to the trust, the original obligation is deemed to have the maturity date of any such subsequent obligation in determining whether the term of the original obligation exceeds the specified 5-year term. In addition, a series of obligations issued and repaid by the trust (or a person related to the trust) is treated as a single obligation if the transactions giving rise to the obligations are structured with a principal purpose to avoid the application of this provision.

(3) *Obligations that cease to be qualified.* If an obligation treated as a qualified obligation subsequently fails to be a qualified obligation (e.g., renegotiation of the terms of the obligation causes the term of the obligation to exceed five years), the U.S. transferor is treated as making a transfer to the trust in an amount equal to the original obligation's adjusted issue price (within the meaning of § 1.1275-1(b)) plus any accrued but unpaid qualified stated interest (within the meaning of § 1.1273-1(c)) as of the date of the subsequent event that causes the obligation to no longer be a qualified obligation. If the maturity date is extended beyond five years by reason of the issuance of a subsequent obligation by the trust (or person related to the trust), the amount of the transfer will

not exceed the issue price of the subsequent obligation. The subsequent obligation is separately tested to determine if it is a qualified obligation.

(4) *Transfers resulting from failed qualified obligations.* In general, a transfer resulting from a failed qualified obligation is deemed to occur on the date of the subsequent event that causes the obligation to no longer be a qualified obligation. However, based on all of the facts and circumstances, the Commissioner may deem a transfer to have occurred on any date on or after the issue date of the original obligation. For example, if at the time the original obligation was issued, the transferor knew or had reason to know that the obligation would not be repaid, the Commissioner could deem the transfer to have occurred on the issue date of the original obligation.

(5) *Renegotiated loans.* Any loan that is renegotiated, extended, or revised is treated as a new loan, and any distribution of funds after such renegotiation, extension, or revision under a pre-existing loan agreement is treated as a transfer subject to this section.

(6) *Principal repayments.* The payment of principal with respect to any obligation that is not treated as a qualified obligation under this paragraph is taken into account on and after the date of the payment in determining the portion of the trust attributable to the property transferred.

(7) *Examples.* The rules of this paragraph (d) are illustrated by the following examples. In all of the examples, *A* is a U.S. resident and *FT* is a foreign trust. The examples are as follows:

Example 1. Demand loan. *A* transfers 500X to *FT* in exchange for a demand note that permits *A* to require repayment by *FT* at any time. *A* is a related person (as defined in § 1.679-1(c)(5)) with respect to *FT*. Because *FT*'s obligation to *A* could remain outstanding for more than five years, the obligation is not a qualified obligation within the meaning of paragraph (d) of this section and, pursuant to paragraph (c) of this section, it is not taken into account for purposes of determining whether *A*'s transfer is eligible for the fair market value exception of paragraph (a)(4) of this section. Accordingly, § 1.679-1 applies with respect to the full 500X transfer to *FT*.

Example 2. Private annuity. *A* transfers 4000X to *FT* in exchange for an annuity from the foreign trust that will pay *A* 100X per year for the rest of *A*'s life. *A* is a related person (as defined in § 1.679-1(c)(5)) with respect to *FT*. Because *FT*'s obligation to *A* could remain outstanding for more than five years, the obligation is not a qualified obligation within the meaning of paragraph (d)(1) of this section and, pursuant to paragraph (c) of this section, it is not taken

into account for purposes of determining whether *A*'s transfer is eligible for the fair market value exception of paragraph (a)(4) of this section. Accordingly, § 1.679-1 applies with respect to the full 4000X transfer to *FT*.

Example 3. Loan to unrelated foreign trust. *B* transfers 1000X to *FT* in exchange for an obligation of the trust. The term of the obligation is fifteen years. *B* is not a related person (as defined in § 1.679-1(c)(5)) with respect to *FT*. Because *B* is not a related person, the adjusted issue price of the obligation received by *B* is taken into account for purposes of determining whether *B*'s transfer is eligible for the fair market value exception of paragraph (a)(4) of this section, even though the obligation is not a qualified obligation within the meaning of paragraph (d)(1) of this section.

Example 4. Transfer for an obligation with term in excess of 5 years. *A* transfers property that has a fair market value of 5000X to *FT* in exchange for an obligation of the trust. The term of the obligation is ten years. *A* is a related person (as defined in § 1.679-1(c)(5)) with respect to *FT*. Because the term of the obligation is greater than five years, the obligation is not a qualified obligation within the meaning of paragraph (d)(1) of this section and, pursuant to paragraph (c) of this section, it is not taken into account for purposes of determining whether *A*'s transfer is eligible for the fair market value exception of paragraph (a)(4) of this section. Accordingly, § 1.679-1 applies with respect to the full 5000X transfer to *FT*.

Example 5. Transfer for a qualified obligation. The facts are the same as in *Example 4*, except that the term of the obligation is 3 years. Assuming the other requirements of paragraph (d)(1) of this section are satisfied, the obligation is a qualified obligation and its adjusted issue price is taken into account for purposes of determining whether *A*'s transfer is eligible for the fair market value exception of paragraph (a)(4) of this section.

Example 6. Effect of subsequent obligation on original obligation. *A* transfers property that has a fair market value of 1000X to *FT* in exchange for an obligation that satisfies the requirements of paragraph (d)(1) of this section. *A* is a related person (as defined in § 1.679-1(c)(5)) with respect to *FT*. Two years later, *A* transfers an additional 2000X to *FT* and receives another obligation from *FT* that has a maturity date four years from the date that the second obligation was issued. Under paragraph (d)(2) of this section, the original obligation is deemed to have the maturity date of the second obligation. Under paragraph (a) of this section, *A* is treated as having made a transfer in an amount equal to the original obligation's adjusted issue price (within the meaning of § 1.1275-1(b)) plus any accrued but unpaid qualified stated interest (within the meaning of § 1.1273-1(c)) as of the date of issuance of the second obligation. The second obligation is tested separately to determine whether it is a qualified obligation for purposes of applying paragraph (a) of this section to the second transfer.

§ 1.679-5 Pre-immigration trusts.

(a) *In general.* If a nonresident alien individual becomes a U.S. person and the individual has a residency starting

date (as determined under section 7701(b)(2)(A)) within 5 years after transferring property to a foreign trust (the original transfer), the individual is treated as having transferred to the trust on the residency starting date an amount equal to the portion of the trust attributable to the property transferred by the individual in the original transfer.

(b) *Special rules—(1) Change in grantor trust status.* For purposes of paragraph (a) of this section, if a nonresident alien individual who is treated as owning any portion of a trust under the provisions of subpart E of part I of subchapter J, chapter 1 of the Internal Revenue Code, subsequently ceases to be so treated, the individual is treated as having made the original transfer to the foreign trust immediately before the trust ceases to be treated as owned by the individual.

(2) *Treatment of undistributed income.* For purposes of paragraph (a) of this section, the property deemed transferred to the foreign trust on the residency starting date includes undistributed net income, as defined in section 665(a), attributable to the property deemed transferred. Undistributed net income for periods before the individual's residency starting date is taken into account only for purposes of determining the amount of the property deemed transferred.

(c) *Examples.* The rules of this section are illustrated by the following examples:

Example 1. Nonresident alien becomes resident alien. On January 1, 2002, *A*, a nonresident alien individual, transfers property to a foreign trust, *FT*. On January 1, 2006, *A* becomes a resident of the United States within the meaning of section 7701(b)(1)(A) and has a residency starting date of January 1, 2006, within the meaning of section 7701(b)(2)(A). Under paragraph (a) of this section, *A* is treated as a U.S. transferor and is deemed to transfer the property to *FT* on January 1, 2006. Under paragraph (b)(2) of this section, the property deemed transferred to *FT* on January 1, 2006, includes the undistributed net income of the trust, as defined in section 665(a), attributable to the property originally transferred.

Example 2. Nonresident alien loses power to re-vest property. On January 1, 2002, *A*, a nonresident alien individual, transfers property to a foreign trust, *FT*. *A* has the power to re-vest absolutely in himself the title to such property transferred and is treated as the owner of the trust pursuant to sections 676 and 672(f). On January 1, 2008, the terms of *FT* are amended to remove *A*'s power to re-vest in himself title to the property transferred, and *A* ceases to be treated as the owner of *FT*. On January 1, 2010, *A* becomes a resident of the United States. Under paragraph (b)(1) of this section, for purposes of paragraph (a) of this section *A* is treated as having originally transferred the property

to *FT* on January 1, 2008. Because this date is within five years of *A*'s residency starting date, *A* is deemed to have made a transfer to the foreign trust on January 1, 2010, his residency starting date. Under paragraph (b)(2) of this section, the property deemed transferred to the foreign trust on January 1, 2010, includes the undistributed net income of the trust, as defined in section 665(a), attributable to the property deemed transferred.

§ 1.679-6 Outbound migrations of domestic trusts.

(a) *In general.* Subject to the provisions of paragraph (b) of this section, if an individual who is a U.S. person transfers property to a trust that is not a foreign trust, and such trust becomes a foreign trust while the U.S. person is alive, the U.S. individual is treated as a U.S. transferor and is deemed to transfer the property to a foreign trust on the date the domestic trust becomes a foreign trust.

(b) *Amount deemed transferred.* For purposes of paragraph (a) of this section, the property deemed transferred to the trust when it becomes a foreign trust includes undistributed net income, as defined in section 665(a), attributable to the property previously transferred. Undistributed net income for periods prior to the migration is taken into account only for purposes of determining the portion of the trust that is attributable to the property transferred by the U.S. person.

(c) *Example.* The following example illustrates the rules of this section. For purposes of the example, *A* is a U.S. resident alien, *B* is *A*'s son, who is a resident alien, and *DT* is a domestic trust. The example is as follows:

Example. Outbound migration of domestic trust. On January 1, 2002, *A* transfers property to *DT*, for the benefit of *B*. On January 1, 2003, *DT* acquires a foreign trustee who has the power to determine whether and when distributions will be made to *B*. Under section 7701(a)(3)(B) and § 301.7701-7(d)(ii)(A), *DT* becomes a foreign trust on January 1, 2003. Under paragraph (a) of this section, *A* is treated as transferring property to a foreign trust on January 1, 2003. Under paragraph (b) of this section, the property deemed transferred to the trust when it becomes a foreign trust includes undistributed net income, as defined in section 665(a), attributable to the property deemed transferred.

§ 1.679-7 Effective dates.

(a) *In general.* Except as provided in paragraph (b) of this section, the rules of §§ 1.679-1, 1.679-2, 1.679-3, and 1.679-4 apply with respect to transfers after August 7, 2000.

(b) *Special rules.* (1) The rules of § 1.679-4 (c) and (d) apply to an

obligation issued after February 6, 1995, whether or not in accordance with a pre-existing arrangement or understanding. For purposes of the rules of § 1.679-4 (c) and (d), if an obligation issued on or before February 6, 1995, is modified after that date, and the modification is a significant modification within the meaning of § 1.1001-3, the obligation is treated as if it were issued on the date of the modification. However, the penalty provided in section 6677 applies only to a failure to report transfers in exchange for obligations issued after August 20, 1996.

(2) The rules of § 1.679-5 apply to persons whose residency starting date is after August 7, 2000.

(3) The rules of § 1.679-6 apply to trusts that become foreign trusts after August 7, 2000.

Par. 3. In § 1.958-1, paragraph (b) is amended by adding a new sentence after the first sentence to read as follows:

§ 1.958-1 Direct and indirect ownership of stock.

* * * * *

(b) * * * For purposes of the preceding sentence, any person that is treated as the owner of any portion of a trust pursuant to sections 671 through 679 shall be treated as a beneficiary of the trust and shall be considered to own all of the stock owned directly or indirectly by or for such portion. * * *

§ 1.958-2 [Amended]

Par. 4. In § 1.958-2, paragraph (c)(1)(ii)(b) is amended by removing the language "678" and adding "679" in its place.

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

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DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-108522-00]

RIN 1545-AY25

Recognition of Gain on Certain Transfers to Certain Foreign Trusts and Estates

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations under section 684 of the Internal Revenue Code relating to recognition of gain on certain transfers to certain foreign trusts and estates. The proposed regulations affect United States persons who transfer property to foreign trusts and estates. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by November 6, 2000. Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for November 8, 2000, must be submitted by October 18, 2000.

ADDRESSES: Send submissions to: CC:MSP:RU (REG-108522-00), room 5226, Internal Revenue Service, PO Box 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:MSP:RU (REG-108522-00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at: http://www.irs.gov/tax_regs/reglist.html. The public hearing will be held in Room 3313, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Karen A. Rennie Quarrie at (202) 622-3880; concerning the submissions and hearing, Sonya M. Cruse at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 684 of the Internal Revenue Code (Code) was added by Section 1131(b) of the Taxpayer Relief Act of 1997 (the Act), Public Law 105-34 (111 Stat. 788) (August 5, 1997). The addition affects the transfer of property by United States persons to certain foreign trusts and foreign estates.

1. Prior Law

Prior to the enactment of section 684, section 1491, with certain exceptions, imposed a 35-percent excise tax on transfers of property by a United States person to a foreign trust or estate. Section 1491 applied to all transfers of appreciated property whether or not at fair market value and whether or not the transfer was made with donative intent. The excise tax was intended to curtail

transfers of appreciated property to foreign trusts, because a foreign trust could dispose of the property and invest the proceeds of the sale outside the United States without incurring any U.S. tax. If the excise tax applied, the foreign trust could not increase the basis of the property contributed to the trust. Under section 1492(3), the U.S. transferor could make an election under section 1057 to treat a transfer of appreciated property to a foreign trust as a sale or exchange of such property and pay an income tax instead of an excise tax on the gain.

2. Overview of Changes

Section 1131 of the Act repealed sections 1491 through 1494 and section 1057 of the Code and enacted section 684. In so doing, Congress eliminated the excise tax on transfers of appreciated property to foreign trusts and foreign estates in favor of an income tax on transfers of appreciated property to foreign trusts and foreign estates. Unlike previous law, however, Congress provided explicit regulatory authority to make exceptions to the mandatory tax on such transfers. These regulations explain the application of section 684 and provide certain exceptions from its application.

Pursuant to section 684(a) of the Code, any transfer of property by a U.S. person to a foreign trust or estate is treated as a taxable disposition of the property, except to the extent provided in regulations. Such a transfer is treated as a sale or exchange of the property for its fair market value. The U.S. transferor must immediately recognize gain equal to the excess of the property's fair market value over its adjusted basis in the hands of the U.S. transferor.

Pursuant to section 684(b), a U.S. person will not be required to recognize gain on the transfer of property to a foreign trust if the U.S. transferor (or other person) is considered to be the owner of the trust under section 671.

Pursuant to section 684(c), if a domestic trust becomes a foreign trust, all trust assets are considered to be transferred to a foreign trust. Thus, appreciated property owned by the trust will be deemed sold on the date that the trust status changes from domestic to foreign, and gain must be recognized on that date.

Explanation of Provisions

Section 1.684-1 Recognition of Gain on Transfers to Certain Foreign Trusts and Estates

Subject to certain exceptions discussed below, the proposed regulations provide a general rule of

immediate recognition of gain when a U.S. person transfers appreciated property to a foreign trust or estate. This immediate gain recognition applies even if the U.S. transferor might otherwise have been eligible to defer gain recognition under another provision of the Code. Losses are not permitted to be recognized under the provision. Moreover, if multiple assets are transferred, the U.S. transferor may not offset losses in some property against gains in other property under the provision.

A U.S. person who transfers property to a foreign trust must comply with the reporting requirements set forth in section 6048 of the Code. See Notice 97-34 (1997-1 C.B. 422), which provides guidance regarding the foreign trust reporting requirements under section 6048.

Section 1.684-2 Transfers

The proposed regulations define the term transfer broadly to mean any direct, indirect or constructive transfer. The determination of whether an indirect or constructive transfer has occurred is made under the rules set forth in proposed regulation § 1.679-3(c) and § 1.679-3(d), respectively, published elsewhere in this issue of the **Federal Register**.

The proposed regulations provide that, if a U.S. person is considered the owner of any portion of a trust, a transfer of property from that portion of the trust will be considered a transfer by the U.S. person that owns that portion of the trust. Thus, for example, a U.S. person cannot avoid the application of section 684 by first transferring property to a trust which he is treated as owning under the grantor trust rules, then having that trust transfer the property to a foreign trust that he is not treated as owning.

Section 1.684-3 Exceptions to the General Rule of Gain Recognition

Under the proposed regulations, certain types of transfers are excepted from the general rule of gain recognition set forth in § 1.684-1. A U.S. person who transfers property to a foreign trust will not be required to recognize gain on the transfer to the extent such trust is considered owned by any person. For example, if a U.S. person transfers property to a foreign trust that is treated as having a U.S. beneficiary under section 679 and the U.S. person is treated as the owner of the trust under that section, the general rule of gain recognition will not apply at that time. If, however, the trust subsequently ceases to be treated as owned by the U.S. person, § 1.684-2(e) provides that

the U.S. person will be treated as having transferred the assets of the trust to a foreign trust immediately before the U.S. person ceases to be considered the owner of the original trust. As a result, the U.S. person will be subject to the general rule of gain recognition at that time (unless another exception, such as the exception for certain transfers on death, applies).

A transfer by a U.S. person to a trust which has received a ruling or determination letter from the IRS recognizing the trust's exempt status under section 501(c)(3) will be exempt from the general rule of gain recognition if the trust's ruling or determination letter has been neither revoked nor modified.

The proposed regulations also provide an exception for transfers by a U.S. person to a foreign trust at death if the property transferred is included in the U.S. person's gross estate for U.S. estate tax purposes and the basis of the property in the hands of the foreign trust is determined under section 1014(a) of the Code. For example, if a U.S. person previously transferred property to a foreign trust and was treated as the owner of the trust under section 679, for purposes of section 684 the cessation of ownership status upon the U.S. person's death is treated as a deemed transfer to the foreign trust by the decedent immediately before her death. If the person retained sufficient powers over the trust to cause the trust property to be included in her gross estate for estate tax purposes and the basis of the property in the hands of the foreign trust is determined under section 1014(a) of the Code, the general rule of gain recognition does not apply. However, to the extent the trust property is not included in her estate and the foreign trust does not receive a step-up in basis in the property under section 1014(a), the exception does not apply.

The proposed regulations also provide an exception to the general rule of gain recognition under § 1.684-1 if property is transferred for fair market value to an unrelated foreign trust. The determination of whether a foreign trust is a related foreign trust is made under the principles set forth in § 1.679-1(c)(5). Thus, for example, if a U.S. person sells property for fair market value to an unrelated foreign trust, the general rule of section 684 will not apply. However, if the sale is to a related foreign trust, immediate gain recognition is required (unless another exception applies), even if another provision of the Code would permit deferral of recognition.

Finally, the proposed regulations provide that the general rule does not apply to a distribution to a trust with respect to an interest held by the trust in a non-trust entity (e.g., a corporation or partnership), or an interest in certain commercial trusts. For example, if a foreign trust owns stock of a U.S. corporation and the U.S. corporation makes a distribution to the trust that is properly characterized as a dividend with respect to the trust's stock ownership, section 684 does not apply.

Section 1.684-4 Outbound Migration of Domestic Trust

The proposed regulations provide that if a U.S. person transfers property to a domestic trust and, for any reason, the domestic trust becomes a foreign trust, the domestic trust will be deemed to have transferred all of its assets to a foreign trust. The domestic trust must immediately recognize gain unless an exception in § 1.684-3 applies at that time (e.g., the U.S. person is living at the time of the trust's change in status and is treated as the owner of the trust under section 679). The domestic trust must also fulfill the reporting requirements set forth in section 6048 of the Code and Notice 97-34.

The proposed regulations incorporate the relief for inadvertent migrations set forth in § 301.7701-7(d)(2). For example, if a trust's status changes from domestic to foreign because of an inadvertent change in the trustee, the trust will avoid the application of the general gain recognition rule if, within 12 months, it makes necessary changes to the trustee in order to remain a domestic trust.

Section 1.684-5 Effective Dates

This section of the proposed regulations provides effective dates with respect to §§ 1.684-1 through 1.684-4. The rules apply with respect to transfers of property to foreign trusts or foreign estates made after August 7, 2000. The primary reason for this effective date is to immediately address taxpayer concerns with respect to the provision of regulatory exceptions to the general rule of gain recognition under section 684(a). It should be noted, however, that the Internal Revenue Service is not restricted from applying general income tax principles to transactions prior to the effective dates of the proposed regulations to determine, for example, that a U.S. person has made a transfer to a foreign trust.

Special Analysis

It has been determined that this notice of proposed rule making is not a significant regulatory action as defined

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 8, 2000, at 10 a.m. in room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the start of the hearing.

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

Persons that wish to present oral comments at the hearing must submit written comments by November 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 October 18, 2000.

A period of ten (10) minutes will be allocated to each person for making comments.

An agenda showing the scheduling to 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 Karen A. Rennie Quarrie of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.684-1 also issued under 26 U.S.C. 643(a)(7) and 684(a).

Section 1.684-2 also issued under 26 U.S.C. 643(a)(7) and 684(a).

Section 1.684-3 also issued under 26 U.S.C. 643(a)(7) and 684(a).

Section 1.684-4 also issued under 26 U.S.C. 643(a)(7) and 684(a).

Section 1.684-5 also issued under 26 U.S.C. 643(a)(7) and 684(a). * * *

Par. 2. Sections 1.684-1, 1.684-2, 1.684-3, 1.684-4 and 1.684-5 are added under the undesignated centerheading "Miscellaneous" to read as follows:

§ 1.684-1 Recognition of gain on transfers to certain foreign trusts and estates.

(a) *Immediate recognition of gain*—(1) *In general.* Any U.S. person who transfers property to a foreign trust or foreign estate shall be required to recognize gain at the time of the transfer equal to the excess of the fair market value of the property transferred over the adjusted basis (for purposes of determining gain) of such property in the hands of the U.S. transferor unless an exception applies under the provisions of § 1.684-3. The amount of gain recognized is determined on an asset-by-asset basis.

(2) *No recognition of loss.* Under this section a U.S. person may not recognize loss on the transfer of an asset to a foreign trust or foreign estate. A U.S. person may not offset gain realized on the transfer of an appreciated asset to a foreign trust or foreign estate by a loss realized on the transfer of a depreciated asset to the foreign trust or foreign estate.

(b) *Definitions.* The following definitions apply for purposes of this section:

(1) *U.S. person.* The term *U.S. person* means a United States person as defined in section 7701(a)(30), and includes a nonresident alien individual who elects under section 6013(g) to be treated as a resident of the United States.

(2) *U.S. transferor.* The term *U.S. transferor* means any U.S. person who makes a transfer (as defined in § 1.684-2) of property to a foreign trust or foreign estate.

(3) *Foreign trust.* Section 7701(a)(31)(B) defines *foreign trust*.

(4) *Foreign estate.* Section 7701(a)(31)(A) defines *foreign estate*.

(c) *Reporting requirements.* A U.S. person who transfers property to a foreign trust or foreign estate must comply with the reporting requirements under section 6048.

(d) *Examples.* The following examples illustrate the rules of this section. In all examples, A is a U.S. person and FT is a foreign trust. The examples are as follows:

Example 1. Transfer to foreign trust. A transfers property that has a fair market value of 1000X to FT. A's adjusted basis in the property is 400X. FT has no U.S. beneficiary within the meaning of § 1.679-2, and no person is treated as owning any portion of FT. Under paragraph (a)(1) of this section, A recognizes gain at the time of the transfer equal to 600X.

Example 2. Transfer of multiple properties. A transfers property Q, with a fair market value of 1000X, and property R, with a fair market value of 2000X, to FT. At the time of the transfer, A's adjusted basis in property Q is 700X, and A's adjusted basis in property R is 2200X. FT has no U.S. beneficiary within the meaning of § 1.679-2, and no person is treated as owning any portion of FT. Under paragraph (a)(1) of this section, A recognizes the 300X of gain attributable to property Q. Under paragraph (a)(2) of this section, A does not recognize the 200X of loss attributable to property R, and may not offset that loss against the gain attributable to property Q.

Example 3. Transfer for less than fair market value. A transfers property that has a fair market value of 1000X to FT in exchange for 400X of cash. A's adjusted basis in the property is 200X. FT has no U.S. beneficiary within the meaning of § 1.679-2, and no person is treated as owning any portion of FT. Under paragraph (a)(1) of this section, A recognizes gain at the time of the transfer equal to 800X.

Example 4. Exchange of property for private annuity. A transfers property that has a fair market value of 1000X to FT in exchange for FT's obligation to pay A 50X per year for the rest of A's life. The obligation has an issue price of 1000X. A's adjusted basis in the property is 100X. FT has no U.S. beneficiary within the meaning of § 1.679-2, and no person is treated as owning any portion of FT. A is required to recognize gain equal to 900X immediately upon transfer of the property to the trust. This result applies even though A might otherwise have been allowed to defer recognition of gain under another provision of the Internal Revenue Code.

Example 5. Transfer of property to related foreign trust in exchange for qualified obligation. A transfers property that has a fair market value of 1000X to FT in exchange for FT's obligation to make payments to A during the next four years. FT is related to A as defined in § 1.679-1(c)(5). The obligation, which has an issue price of 1000X, is treated as a qualified obligation within the meaning of § 1.679-4(d), and no person is treated as owning any portion of FT. A's adjusted basis in the property is 100X. A is required to

recognize gain equal to 900X immediately upon transfer of the property to the trust. This result applies even though A might otherwise have been allowed to defer recognition of gain under another provision of the Internal Revenue Code. Section 1.684-3(d) provides rules relating to transfers for fair market value to unrelated foreign trusts.

§ 1.684-2 Transfers.

(a) *In general.* A transfer means a direct, indirect, or constructive transfer.

(b) *Indirect transfers*—(1) *In general.* Section 1.679-3(c) shall apply to determine if a transfer to a foreign trust or foreign estate, by any person, is treated as an indirect transfer by a U.S. person to the foreign trust or foreign estate.

(2) *Examples.* The following examples illustrate the rules of this paragraph (b). In all examples, A is a U.S. citizen, FT is a foreign trust, and I is A's uncle, who is a nonresident alien. The examples are as follows:

Example 1. Principal purpose of tax avoidance. A creates and funds FT for the benefit of A's cousin, who is a nonresident alien. FT has no U.S. beneficiary within the meaning of § 1.679-2, and no person is treated as owning any portion of FT. In 2004, A decides to transfer additional property with a fair market value of 1000X and an adjusted basis of 600X to FT. Pursuant to a plan with a principal purpose of avoiding the application of section 684, A transfers the property to I. I subsequently transfers the property to FT. Under paragraph (b) of this section and § 1.679-3(c), A is treated as having transferred the property to FT.

Example 2. U.S. person unable to demonstrate that intermediary acted independently. A creates and funds FT for the benefit of A's cousin, who is a nonresident alien. FT has no U.S. beneficiary within the meaning of § 1.679-2, and no person is treated as owning any portion of FT. On July 1, 2004, A transfers property with a fair market value of 1000X and an adjusted basis of 300X to I, a foreign person. On January 1, 2007, at a time when the fair market value of the property is 1100X, I transfers the property to FT. A is unable to demonstrate to the satisfaction of the Commissioner, under § 1.679-3(c)(2)(ii), that I acted independently of A in making the transfer to FT. Under this paragraph (b) and § 1.679-3(c), A is treated as having transferred the property to FT. Under this paragraph (b) and § 1.679-3(c)(3), I is treated as an agent of A, and the transfer is deemed to have been made on January 1, 2007. Under § 1.684-1(a), A recognizes gain equal to 800X on that date.

(c) *Constructive transfers.* Section 1.679-3(d) shall apply to determine if a transfer to a foreign trust or foreign estate is treated as a constructive transfer by a U.S. person to the foreign trust or foreign estate.

(d) *Transfers by certain trusts*—(1) *In general.* If any portion of a trust is treated as owned by a U.S. person, a

transfer of property from that portion of the trust to a foreign trust is treated as a transfer from the owner of that portion to the foreign trust.

(2) *Examples.* The following examples illustrate the rules of this paragraph (d). In all examples, A is a U.S. person, DT is a domestic trust, and FT is a foreign trust. The examples are as follows:

Example 1. Transfer by a domestic trust. On January 1, 2001, A transfers property which has a fair market value of 1000X and an adjusted basis of 200X to DT. A retains the power to revoke DT. On January 1, 2003, DT transfers property which has a fair market value of 500X and an adjusted basis of 100X to FT. At the time of the transfer, FT has no U.S. beneficiary as defined in § 1.679-2 and no person is treated as owning any portion of FT. A is treated as having transferred the property to FT and is required to recognize gain of 400X, under § 1.684-1, at the time of the transfer by DT to FT.

Example 2. Transfer by a foreign trust. On January 1, 2001, A transfers property which has a fair market value of 1000X and an adjusted basis of 200X to FT1. At the time of the transfer, FT1 has a U.S. beneficiary as defined in § 1.679-2 and A is treated as the owner of FT1 under section 679. On January 1, 2003, FT1 transfers property which has a fair market value of 500X and an adjusted basis of 100X to FT2. At the time of the transfer, FT2 has no U.S. beneficiary as defined in § 1.679-2 and no person is treated as owning any portion of FT2. A is treated as having transferred the property to FT2 and is required to recognize gain of 400X, under § 1.684-1, at the time of the transfer by FT1 to FT2.

(e) *Transfers when foreign trust no longer treated as owned by a U.S. person*—(1) *In general.* If any portion of a foreign trust is treated as owned by a U.S. person under subpart E of part I of subchapter J, chapter 1 of the Internal Revenue Code, and such portion ceases to be treated as owned by that person under such subpart, the U.S. person shall be treated as having transferred, immediately before the trust is no longer treated as owned by that U.S. person, the assets of such portion to a foreign trust.

(2) *Examples.* The following examples illustrate the rules of this paragraph (e). In all examples, A is a U.S. citizen and FT is a foreign trust. The examples are as follows:

Example 1. Loss of U.S. beneficiary. (i) On January 1, 2001, A transfers property, which has a fair market value of 1000X and an adjusted basis of 400X, to FT. At the time of the transfer, FT has a U.S. beneficiary within the meaning of § 1.679-2, and A is treated as owning FT under section 679. Under § 1.684-3(a), § 1.684-1 does not cause A to recognize gain at the time of the transfer.

(ii) On July 1, 2003, FT ceases to have a U.S. beneficiary within the meaning of § 1.679-2, and as of that date neither A nor any other person is treated as owning any

portion of FT. On that date, the fair market value of the property is 1200X, and its adjusted basis equals 350X. Under paragraph (e)(1) of this section, A is treated as having transferred the property to FT on July 1, 2003, and must recognize 850X of gain at that time under § 1.684-1.

Example 2. Death of grantor. (i) The initial facts are the same as in paragraph (i) of Example 1.

(ii) On July 1, 2003, A dies, and as of that date no other person is treated as the owner of FT. On that date, the fair market value of the property is 1200X, and its adjusted basis equals 350X. Under paragraph (e)(1) of this section, A is treated as having transferred the property to FT immediately before his death, and generally is required to recognize 850X of gain at that time under § 1.684-1. However, an exception may apply under § 1.684-3(c).

Example 3. Release of a power. (i) On January 1, 2001, A transfers property that has a fair market value of 500X and an adjusted basis of 200X to FT. At the time of the transfer, FT does not have a U.S. beneficiary within the meaning of § 1.679-2. However, A retains the power to revoke the trust. A is treated as the owner of the trust under section 676 and, therefore, under § 1.684-3(a), A is not required to recognize gain under § 1.684-1 at the time of the transfer.

(ii) On January 1, 2007, A releases the power to revoke the trust and, as of that date, neither A nor any other person is treated as owning any portion of FT. On that date, the fair market value of the property is 900X, and its adjusted basis is 200X. Under paragraph (e)(1) of this section, A is treated as having transferred the property to FT on January 1, 2007, and must recognize 700X of gain at that time.

(f) *Transfers to entities owned by a foreign trust.* Section 1.679-3(f) provides rules that apply with respect to transfers of property by a U.S. person to an entity in which a foreign trust holds an ownership interest.

§ 1.684-3 Exceptions to general rule of gain recognition.

(a) *Transfers to grantor trusts.* The general rule of gain recognition under § 1.684-1 shall not apply to any transfer of property by a U.S. person to a foreign trust to the extent that any person is treated as the owner of the trust under section 671. Section 1.684-2(e) provides rules regarding a subsequent change in the status of the trust.

(b) *Transfers to charitable trusts.* The general rule of gain recognition under § 1.684-1 shall not apply to any transfer of property to a foreign trust that has received a ruling or determination letter, which has been neither revoked nor modified, from the Internal Revenue Service recognizing the trust's exempt status under section 501(c)(3).

(c) *Certain transfers at death.* The general rule of gain recognition under § 1.684-1 shall not apply to any transfer of property by reason of death of the U.S. transferor if such property is

included in the gross estate of the U.S. transferor for Federal estate tax purposes and the basis of the property in the hands of the foreign trust is determined under section 1014(a).

(d) *Transfers for fair market value to unrelated trusts.* The general rule of gain recognition under § 1.684-1 shall not apply to any transfer of property for fair market value to a foreign trust that is not a related foreign trust as defined in § 1.679-1(c)(5). Section § 1.671-2(e)(2)(ii) defines fair market value.

(e) *Certain distributions to trusts.* For purposes of this section, a transfer does not include a distribution to a trust with respect to an interest held by such trust in an entity other than a trust or an interest in certain investment trusts described in § 301.7701-4(c) of this chapter, liquidating trusts described in § 301.7701-4(d) of this chapter, or environmental remediation trusts described in § 301.7701-4(e) of this chapter.

(f) *Examples.* The following examples illustrate the rules of this section. In all examples, *A* is a U.S. citizen and *FT* is a foreign trust. The examples are as follows:

Example 1. Transfer to owner trust. In 2001, *A* transfers property which has a fair market value of 1000X and an adjusted basis equal to 400X to *FT*. At the time of the transfer, *FT* has a U.S. beneficiary within the meaning of § 1.679-2, and *A* is treated as owning *FT* under section 679. Under paragraph (a) of this section, § 1.684-1 does not cause *A* to recognize gain at the time of the transfer. See § 1.684-2(e) for rules that may require *A* to recognize gain if the trust is no longer owned by *A*.

Example 2. Property included in U.S. transferor's estate at death. (i) The initial facts are the same as *Example 1*.

(ii) *A* dies on July 1, 2004. The fair market value at *A*'s death of all property transferred to *FT* by *A* is 1500X. The basis in the property is 400X. *A* retained the power to revoke *FT*, thus, the value of all property owned by *FT* at *A*'s death is includible in *A*'s gross estate for U.S. estate tax purposes. Pursuant to paragraph (c) of this section, *A* is not required to recognize gain under § 1.684-1 to the extent the property is included in *A*'s gross estate and the basis of the property in the hands of the foreign trust is determined under section 1014(a).

Example 3. Property not included in U.S. transferor's estate at death. (i) The initial facts are the same as *Example 1*.

(ii) *A* dies on July 1, 2004. The fair market value at *A*'s death of all property transferred to *FT* by *A* is 1500X. The basis in the property is 400X. *A* retained no power over *FT* and the value of the property transferred to *FT* is not required to be included in *A*'s gross estate. Under § 1.684-2(e)(1), *A* is treated as having transferred the property to *FT* immediately before his death, and must recognize 1100X of gain at that time under § 1.684-1.

Example 4. Transfer of property for fair market value to an unrelated foreign trust. *A* sells a house with a fair market value of 1000X to *FT* in exchange for a 30-year note issued by *FT*. *A* is not related to *FT* as defined in § 1.679-1(c)(5). The note has an issue price of 1000X. *FT* is not treated as owned by any person. Pursuant to paragraph (d) of this section, *A* is not required to recognize gain under § 1.684-1.

§ 1.684-4 Outbound migrations of domestic trusts.

(a) *In general.* If a U.S. person transfers property to a domestic trust, and such trust becomes a foreign trust, the trust shall be treated for purposes of this section as having transferred all of its assets to a foreign trust and the trust is required to recognize gain on the transfer under § 1.684-1(a). The trust must also comply with the rules of section 6048.

(b) *Date of transfer.* The transfer described in this section shall be deemed to occur immediately before, but on the same date that, the trust meets the definition of a foreign trust set forth in section 7701(a)(31)(B).

(c) *Inadvertent migrations.* In the event of an inadvertent migration, as defined in § 301.7701(d)(2) of this chapter, a trust may avoid the application of this section by complying with the procedures set forth in § 301.7701-7(d)(2) of this chapter.

(d) *Examples.* The following examples illustrate the rules of this section. In all examples, *A* is a U.S. citizen, *B* is a U.S. citizen, *C* is a nonresident alien, *T* is a trust. The examples are as follows:

Example 1. Migration of domestic trust with U.S. beneficiaries. *A* transfers property which has a fair market value of 1000X and an adjusted basis equal to 400X to *T*, a domestic trust, for the benefit of *A*'s children who are also United States citizens. *B* is the trustee of *T*. On January 1, 2001, while *A* is still alive, *B* resigns as trustee and *C* becomes successor trustee under the terms of the trust. Pursuant to § 301.7701-7(d) of this chapter, *T* becomes a foreign trust. *T* has U.S. beneficiaries within the meaning of § 1.679-2 and *A* is, therefore, treated as owning *FT* under section 679. Pursuant to § 1.684-3(a), neither *A* nor *T* is required to recognize gain at the time of the migration. Section 1.684-2(e) provides rules that may require *A* to recognize gain upon a subsequent change in the status of the trust.

Example 2. Migration of domestic trust with no U.S. beneficiaries. *A* transfers property which has a fair market value of 1000X and an adjusted basis equal to 400X to *T*, a domestic trust for the benefit of *A*'s mother who is not a citizen or resident of the United States. *B* is the trustee of *T*. On January 1, 2001, while *A* is still alive, *B* resigns as trustee and *C* becomes successor trustee under the terms of the trust. Pursuant to § 301.7701-7(d) of this chapter, *T* becomes a foreign trust, *FT*. *FT* has no U.S. beneficiaries within the meaning of § 1.679-

2 and no person is treated as owning any portion of *FT*. *T* is required to recognize gain of 600X on January 1, 2001. Paragraph (c) of this section provides rules with respect to an inadvertent migration of a domestic trust.

§ 1.684-5 Effective date.

(a) Sections 1.684-1 through 1.684-4 apply to transfers of property to foreign trusts and foreign estates after August 7, 2000.

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

[FR Doc. 00-19896 Filed 8-2-00; 1:04 pm]

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DEPARTMENT OF DEFENSE

Defense Contract Audit Agency

32 CFR Part 317

[DCAA Reg. 5410.10]

Privacy Act; Implementation

AGENCY: Defense Contract Audit Agency, DoD.

ACTION: Proposed rule.

SUMMARY: The Defense Contract Audit Agency is revising its Privacy Act Program to provide implementation policies and procedures.

DATES: Comments must be received on or before October 6, 2000 to be considered by this agency.

ADDRESSES: Send comments to Defense Contract Audit Agency, Information and Privacy Advisor, CMR, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060-6219.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall at (703) 767-1005.

SUPPLEMENTARY INFORMATION:

Executive Order 12866. It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of \$100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act. It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a

substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

List of Subjects in 32 CFR Part 317

Privacy.

1. Accordingly, 32 CFR part 317 is proposed to be revised as follows:

PART 317—DCAA PRIVACY ACT PROGRAM

Sec.

- 317.1 Purpose.
- 317.2 Applicability and scope.
- 317.3 Policy.
- 317.4 Responsibilities.
- 317.5 Information requirements
- 317.6 Procedures.

Authority: Pub.L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

§ 317.1 Purpose.

This part provides policies and procedures for the Defense Contract Audit Agency's implementation of the Privacy Act of 1974 (DCAA Regulation 5410.10),¹ as amended, (5 U.S.C. 552a); DoD 5400.11 and DoD 5400.11-R, DoD Privacy Program² (32 CFR part 310); and is intended to promote uniformity within DCAA.

§ 317.2 Applicability and scope.

(a) This part applies to all DCAA organizational elements and takes precedence over all regional regulatory issuances that supplement the DCAA Privacy Program.

(b) This part shall be made applicable by contract or other legally binding action to contractors whenever a DCAA contract provides for the operation of a system of records or portion of a system of records to accomplish an Agency function.

§ 317.3 Policy.

(a) It is DCAA policy that personnel will comply with the DCAA Privacy Program; the Privacy Act of 1974; and the DoD Privacy Program (32 CFR part 310). Strict adherence is necessary to ensure uniformity in the implementation of the DCAA Privacy

Program and create conditions that will foster public trust. It is also Agency policy to safeguard personal information contained in any system of records maintained by DCAA organizational elements and to make that information available to the individual to whom it pertains to the maximum extent practicable.

(b) DCAA policy specifically requires that DCAA organizational elements:

(1) Collect, maintain, use, and disseminate personal information only when it is relevant and necessary to achieve a purpose required by statute or Executive Order.

(2) Collect personal information directly from the individuals to whom it pertains to the greatest extent practical.

(3) Inform individuals who are asked to supply personal information for inclusion in any system of records:

- (i) The authority for the solicitation.
- (ii) Whether furnishing the information is mandatory or voluntary.
- (iii) The intended uses of the information.

(iv) The routine disclosures of the information that may be made outside of DoD.

(v) The effect on the individual of not providing all or any part of the requested information.

(4) Ensure that records used in making determinations about individuals and those containing personal information are accurate, relevant, timely, and complete for the purposes for which they are being maintained before making them available to any recipients outside of DoD, other than a Federal agency, unless the disclosure is made under DCAA Regulation 5410.8, DCAA Freedom of Information Act Program.³

(5) Keep no record that describes how individuals exercise their rights guaranteed by the First Amendment to the U.S. Constitution, unless expressly authorized by statute or by the individual to whom the records pertain or is pertinent to and within the scope of an authorized law enforcement activity.

(6) Notify individuals whenever records pertaining to them are made available under compulsory legal processes, if such process is a matter of public record.

(7) Establish safeguards to ensure the security of personal information and to protect this information from threats or hazards that might result in substantial harm, embarrassment, inconvenience, or unfairness to the individual.

(8) Establish rules of conduct for DCAA personnel involved in the design, development, operation, or maintenance of any system of records and train them in these rules of conduct.

(9) Assist individuals in determining what records pertaining to them are being collected, maintained, used, or disseminated.

(10) Permit individual access to the information pertaining to them maintained in any system of records, and to correct or amend that information, unless an exemption for the system has been properly established for an important public purpose.

(11) Provide, on request, an accounting of all disclosures of the information pertaining to them except when disclosures are made:

(i) To DoD personnel in the course of their official duties.

(ii) Under DCAA Regulation 5410.8, DCAA Freedom of Information Act Program.

(iii) To another agency or to an instrumentality of any governmental jurisdiction within or under control of the United States conducting law enforcement activities authorized by law.

(12) Advise individuals on their rights to appeal any refusal to grant access to or amend any record pertaining to them, and file a statement of disagreement with the record in the event amendment is refused.

§ 317.4 Responsibilities.

(a) The Assistant Director, Resources has overall responsibility for the DCAA Privacy Act Program and will serve as the sole appellate authority for appeals to decisions of respective initial denial authorities.

(b) The Chief, Administrative Management Division, under the direction of the Assistant Director, Resources, shall:

(1) Establish, issue, and update policies for the DCAA Privacy Act Program; monitor compliance with this part; and provide policy guidance for the DCAA Privacy Act Program.

(2) Resolve conflicts that may arise regarding implementation of DCAA Privacy Act policy.

(3) Designate an Agency Privacy Act Advisor, as a single point of contact, to coordinate on matters concerning Privacy Act policy.

(4) Make the initial determination to deny an individual's written Privacy Act request for access to or amendment of documents filed in Privacy Act systems of records. This authority cannot be delegated.

(c) The DCAA Privacy Act Advisor under the supervision of the Chief,

¹ Copies may be obtained from <http://www.deskbook.osd.mil>.

² Copies may be obtained from <http://web7.whs.osd.mil>.

³ Copies may be obtained from <http://www.deskbook.osd.mil>.

Administrative Management Division, shall:

(1) Manage the DCAA Privacy Act Program in accordance with this part and applicable DCAA policies, as well as DoD and Federal regulations.

(2) Provide guidelines for managing, administering, and implementing the DCAA Privacy Act Program.

(3) Implement and administer the Privacy Act program at the Headquarters.

(4) Ensure that the collection, maintenance, use, or dissemination of records of identifiable personal information is in a manner that assures that such action is for a necessary and lawful purpose; that the information is timely and accurate for its intended use; and that adequate safeguards are provided to prevent misuse of such information.

(5) Maintain and publish DCAA Pamphlet 5410.13, DCAA Compilation of Privacy Act System Notices.⁴

(6) Prepare promptly any required new, amended, or altered system notices for systems of records subject to the Privacy Act and submit them to the Defense Privacy Office for subsequent publication in the **Federal Register**.

(7) Prepare the annual Privacy Act Report as required by DoD 5400.11-R, DoD Privacy Program.

(8) Conduct training on the Privacy Act program for Agency personnel.

(d) Heads of Principal Staff Elements are responsible for:

(1) Reviewing all regulations or other policy and guidance issuances for which they are the proponent to ensure consistency with the provisions of this part.

(2) Ensuring that the provisions of this part are followed in processing requests for records.

(3) Forwarding to the DCAA Privacy Act Advisor, any Privacy Act requests received directly from a member of the public, so that the request may be administratively controlled and processed.

(4) Ensuring the prompt review of all Privacy Act requests, and when required, coordinating those requests with other organizational elements.

(5) Providing recommendations to the DCAA Privacy Act Advisor regarding the releasability of DCAA records to members of the public, along with the responsive documents.

(6) Providing the appropriate documents, along with a written

justification for any denial, in whole or in part, of a request for records to the DCAA Privacy Act Advisor. Those portions to be excised should be bracketed in red pencil, and the specific exemption or exemptions cited which provide the basis for denying the requested records.

(e) The General Counsel is responsible for:

(1) Ensuring uniformity is maintained in the legal position, and the interpretation of the Privacy Act; 32 CFR part 310; and this part.

(2) Consulting with DoD General Counsel on final denials that are inconsistent with decisions of other DoD components, involve issues not previously resolved, or raise new or significant legal issues of potential significance to other Government agencies.

(3) Providing advice and assistance to the Assistant Director, Resources; Regional Directors; and the Regional Privacy Act Officer, through the DCAA Privacy Act Advisor, as required, in the discharge of their responsibilities.

(4) Coordinating Privacy Act litigation with the Department of Justice.

(5) Coordinating on Headquarters denials of initial requests.

(f) Each Regional Director is responsible for the overall management of the Privacy Act program within their respective regions. Under his/her direction, the Regional Resources Manager is responsible for the management and staff supervision of the program and for designating a Regional Privacy Act Officer. Regional Directors will, as designee of the Director, make the initial determination to deny an individual's written Privacy Act request for access to or amendment of documents filed in Privacy Act systems of records. This authority cannot be delegated.

(g) Regional Privacy Act Officers will:

(1) Implement and administer the Privacy Act program throughout the region.

(2) Ensure that the collection, maintenance, use, or dissemination of records of identifiable personal information is in a DCAAR 5410.10 manner that assures that such action is for a necessary and lawful purpose; that the information is timely and accurate for its intended use; and that adequate safeguards are provided to prevent misuse of such information.

(3) Prepare input for the annual Privacy Act Report when requested by the DCAA Information and Privacy Advisor.

(4) Conduct training on the Privacy Act program for regional and FAO personnel.

(5) Provide recommendations to the Regional Director through the Regional Resources Manager regarding the releasability of DCAA records to members of the public.

(h) Managers, Field Audit Offices (FAOs) will:

(1) Ensure that the provisions of this part are followed in processing requests for records.

(2) Forward to the Regional Privacy Act Officer, any Privacy Act requests received directly from a member of the public, so that the request may be administratively controlled and processed.

(3) Ensure the prompt review of all Privacy Act requests, and when required, coordinating those requests with other organizational elements.

(4) Provide recommendations to the Regional Privacy Act Officer regarding the releasability of DCAA records to members of the public, along with the responsive documents.

(5) Provide the appropriate documents, along with a written justification for any denial, in whole or in part, of a request for records to the Regional Privacy Act Officer. Those portions to be excised should be bracketed in red pencil, and the specific exemption or exemptions cited which provide the basis for denying the requested records.

(i) DCAA Employees will:

(1) Not disclose any personal information contained in any system of records, except as authorized by this part.

(2) Not maintain any official files which are retrieved by name or other personal identifier without first ensuring that a notice for the system has been published in the **Federal Register**.

(3) Report any disclosures of personal information from a system of records or the maintenance of any system of records that are not authorized by this part to the appropriate Privacy Act officials for their action.

§ 317.5 Information requirements.

The Report Control Symbol. Unless otherwise directed, any report concerning implementation of the Privacy Program shall be assigned Report Control Symbol DD-DA&M(A)1379.

§ 317.6 Procedures.

Procedures for processing material in accordance with the Privacy Act of 1974 are outlined in DoD 5400.11-R, DoD Privacy Program (32 CFR part 310).

⁴ Copies may be obtained from the Defense Contract Audit Agency, ATTN: DCAA-CMO, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060-6219. Electronic copies of DCAA Privacy notices may be obtained from <http://www.defenselink.mil/privacy>.

Dated: July 31, 2000.

L.M. Bynum,

*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*

[FR Doc. 00-19860 Filed 8-4-00; 8:45 am]

BILLING CODE 5001-10-F

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 293

Wilderness—Primitive Areas; Fixed Anchors in Wilderness

AGENCY: Forest Service, USDA.

ACTION: Negotiated rulemaking committee meeting.

SUMMARY: The Secretary of Agriculture has established a negotiated rulemaking committee to develop recommendations for a proposed rule for the placement, use, and removal of fixed anchors used for recreational rock climbing purposes in congressionally designated wilderness areas administered by the Forest Service. The Fixed Anchors in Wilderness Negotiated Rulemaking Advisory Committee is composed of individuals representing a cross section of interests with a definable stake in the outcome of the proposed rule. The Committee has been established in accordance with the provisions of the Federal Advisory Committee Act and is engaged in the process of rulemaking pursuant to the provisions of the Negotiated Rulemaking Act. The Committee has held meetings in June and July and will hold the third meeting in August. All meetings of the committee are open to public attendance.

DATE: The next meeting of the advisory committee will be held in Golden, Colorado, on August 30-31. The meeting is scheduled from 8 a.m. to 5:30 p.m. on the first day and from 8 a.m. to 3:30 p.m. on the second day.

ADDRESSES: The advisory committee meeting will be held in the auditorium of the Rocky Mountain Regional Office, Forest Service, USDA, 740 Simms St., Golden, Colorado.

FOR FURTHER INFORMATION CONTACT: Jerry Stokes, Wilderness Program Manager, Recreation, Heritage, and Wilderness Resources Staff, (202) 205-0925.

Dated: August 1, 2000.

James R. Furnish,

Deputy Chief, National Forest System.

[FR Doc. 00-19903 Filed 8-4-00; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900-AK12

Schedule for Rating Disabilities: Disabilities of the Liver

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) Schedule for Rating Disabilities by revising the portion of the Digestive System that addresses disabilities of the liver. The intended effect of this action is to update this portion of the rating schedule to ensure that it uses current medical terminology and unambiguous criteria, and that it reflects medical advances that have occurred since the last review.

DATES: Comments must be received by VA on or before October 6, 2000.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420; or fax comments to (202) 273-9289; or e-mail comments to "OGCRegulations@mail.va.gov". Comments should indicate that they are submitted in response to "RIN 2900-AK12." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT:

Caroll McBrine, M.D., Consultant, Policy and Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420, (202) 273-7230.

SUPPLEMENTARY INFORMATION: This document proposes to amend the Department of Veterans Affairs (VA) Schedule for Rating Disabilities by revising that portion of the Digestive System that addresses disabilities of the liver. VA published an advance notice of proposed rulemaking in the **Federal Register** on May 2, 1991 (56 FR 20168), advising the public that it was preparing to revise and update the schedule for rating disabilities of the digestive system. This regulation proposes to amend only 38 CFR 4.112 and certain diagnostic codes in 38 CFR 4.114, in order to address hepatitis C and its sequelae, and to update evaluation criteria for other liver disabilities.

Extensive new medical information has recently become available about hepatitis C, a liver disease that occurs frequently in veterans and at a prevalence rate which is likely higher than in the civilian population. To address hepatitis C and related liver disabilities adequately requires that we update the entire portion of the digestive system that pertains to liver disease.

In response to the advance notice of proposed rulemaking, we received comments from the American Legion and from several VA employees. One commenter addressed liver disabilities, suggesting, among other things, that we add hepatitis A, B, and C, and chronic inflammation of the liver and its residuals, to the rating schedule. The same commenter also suggested that other residuals need to be addressed and that cirrhosis is not the only residual of chronic hepatitis. Another commenter suggested that we address liver transplants in the revised schedule. We propose to address each of these suggestions from commenters in this revision, as discussed below.

In addition to publishing an advance notice, VA contracted with an outside consultant to recommend changes to the digestive system sections of the rating schedule to ensure that the schedule uses current medical terminology and unambiguous criteria, and that it reflects medical advances that have occurred since the last review. The consultant convened a panel of non-VA specialists to review that portion of the rating schedule dealing with the digestive system and to make recommendations for changes. The comments of the consultants on liver disabilities are incorporated into the discussions below.

Current § 4.112, "Weight loss," addresses in general terms the issues of when weight loss is significant or important, how it is determined, and what is meant by inability to gain weight. Upon the advice of our contract consultants, we propose to make this information more specific, and therefore more useful for evaluation purposes, by stating that the term "substantial weight loss," for purposes of evaluating conditions in § 4.114, means a loss of greater than 20 percent of the individual's baseline weight, sustained for three months or longer; that the term "minor weight loss" means a loss of 10 to 20 percent of the individual's baseline weight, sustained for three months or longer; and that the term "inability to gain weight" means "substantial" (rather than the current term "significant") weight loss with inability to regain it despite appropriate therapy. In view of these changes, we

propose to remove the current reference to standard age, height, and weight tables, since it is more accurate to compare weight after onset of the illness with the individual's own usual, baseline, or premorbid weight, rather than with the "predicted average weight for height and age," which may never have applied to that individual.

Injury of the liver (diagnostic code 7311) is currently evaluated under the criteria for adhesions of the peritoneum (diagnostic code 7301). However, our specialist consultants noted that injury to the liver may result in abnormalities other than adhesions, such as damage to the liver parenchyma. We, therefore, propose to add the option of evaluating as cirrhosis of the liver (diagnostic code 7312) or chronic liver disease without cirrhosis (diagnostic code 7345) (see discussion below), depending on the specific residuals. These criteria would better encompass the possible residuals of liver injury. Our consultants also suggested that we add the phrase "including surgery" to the title of this diagnostic code. However, the current title is not restrictive as to what types of injury are included, and we, therefore, do not propose to adopt the suggested change.

Diagnostic code 7312 is currently titled "liver, cirrhosis of." We propose to broaden the scope of this code to include primary biliary cirrhosis and the cirrhotic phase of sclerosing cholangitis, two conditions that are not included in the current rating schedule but that are related to cirrhosis of the liver and have similar disabling effects. We propose to revise the title accordingly to "Cirrhosis of the liver, primary biliary cirrhosis, or cirrhotic phase of sclerosing cholangitis." Cirrhosis of the liver is currently evaluated at 100, 70, 50, or 30 percent, based on ascites, recurrent hemorrhage from esophageal varices, enlargement of the liver, muscle wasting, loss of strength, dilated abdominal veins, dyspepsia, weight loss, and impairment of health. The evaluation criteria rely on subjective terms, such as "pronounced," "severe," "moderately severe," and "moderate," and on the frequency of "tapping" (an outdated term) for ascites. We propose to delete the subjective and outdated terms, but to retain the same evaluation levels, add a 10 percent evaluation level, and base the evaluation on similar, but updated, criteria. We propose to base evaluation under diagnostic code 7312 on the presence or history of ascites (an accumulation of fluid in the abdominal cavity), hemorrhage from varices (enlarged, tortuous veins at the lower end of the esophagus) or portal

gastropathy (erosive gastritis), hepatic encephalopathy, portal hypertension, splenomegaly (enlarged spleen), jaundice, and emaciation (or lesser degrees of weight loss), as well as on symptoms of generalized weakness, anorexia (lack of appetite), abdominal pain, and malaise (a vague feeling of bodily discomfort). These are all signs and symptoms of cirrhosis that occur at different stages of the disease. Ascites, hemorrhage, and hepatic encephalopathy are all major complications that usually occur only in advanced stages of cirrhosis, when there is portal hypertension (elevated blood pressure in the veins of the portal system, which may occur with severe liver disease) ("The Merck Manual," 374, 17th ed., 1999). We propose to assign a 100-percent evaluation if ascites, hepatic encephalopathy, or hemorrhage from varices or portal gastropathy is present and refractory (not readily yielding to treatment or unresponsive) to treatment, or if there is persistent jaundice, generalized weakness, and significant weight loss. We propose to assign a 70-percent evaluation if there is a history of two or more episodes of ascites, hepatic encephalopathy, or hemorrhage from varices or portal gastropathy, but with periods of remission between attacks, and a 50-percent evaluation if there is a history of one episode of ascites, hepatic encephalopathy, or hemorrhage from varices or portal gastropathy. We propose to assign a 30-percent evaluation if there is portal hypertension and splenomegaly, with weakness, anorexia, abdominal pain, malaise, and at least minor weight loss. We also propose to add a 10-percent evaluation level, to be assigned if there is weakness, anorexia, abdominal pain, and malaise. This would provide an appropriate evaluation level for individuals who have symptoms due to cirrhosis but do not meet the criteria for a 30-percent evaluation, as might occur in the early stages of the disease. These criteria are similar to those suggested by our consultants, except that we propose to exclude subjective terms such as "pronounced" and "mild." We also propose, to assure consistency in application of these criteria, to add a note stating that evaluation under this diagnostic code requires documentation of cirrhosis (by biopsy or imaging) and abnormal liver function tests, which are much more accurate methods for diagnosing cirrhosis. The proposed criteria are expressed in current medical terminology, are objective enough to assure consistent evaluations, and

provide a broad range of evaluation percentages.

Residuals of liver abscess, diagnostic code 7313, are currently evaluated at 20 or 30 percent, based on whether there are "moderate" or "severe" symptoms. We propose to delete diagnostic code 7313 because our consultants advised us that abscesses of the liver now resolve without residual disability through the use of modern antibiotics and drainage techniques.

Diagnostic code 7343 is currently titled "new growths, malignant, exclusive of skin growths." We propose to change "new growths, malignant" to "malignant neoplasms," because that is current medical terminology, and to add "of the digestive system" to the title, because this would more clearly indicate that this code refers only to malignant neoplasms of this system. Under current diagnostic code 7343, a 100-percent evaluation is assigned, and then continued for one year following cessation of surgical, X-ray or antineoplastic chemotherapy. Rating is made on residuals at that time if there has been no local recurrence or metastases. In order to assure that an evaluation will be based on actual medical findings rather than on a regulatory assumption that there has been improvement, we are proposing to continue the total evaluation under this code indefinitely after treatment is discontinued, and to examine the veteran six months after treatment ends. If the results of this or any subsequent examination warrant a reduction in evaluation, the reduction would be implemented under the provisions of 38 CFR 3.105(e), which require a 60-day notice before VA reduces an evaluation and an additional 60-day notice before the reduced evaluation takes effect. The proposed revision would not only require a current examination to assure that all residuals are documented, but also offer the veteran more contemporaneous notice of any proposed action and expand the veteran's opportunity to present evidence showing that the proposed action should not be taken. If local recurrence or metastasis is not present, evaluation would be made on residuals. This change would provide criteria similar to those used in the evaluation of malignant neoplasms in other sections of the rating schedule that have recently been revised. (See, for example, diagnostic code 7528, malignant neoplasms of the genitourinary system, in 38 CFR 4.115b, and diagnostic code 7627, malignant neoplasms of gynecological system or breast, in 38 CFR 4.116.)

We also propose to change the title of DC 7344 from "new growths, benign" to "benign neoplasms," in accordance with current medical usage, and to revise the instructions to make clear that this condition is to be evaluated under a diagnostic code which reflects the resulting predominant disability or residual.

Diagnostic code 7345 is currently titled "infectious hepatitis." This is the former name for hepatitis A, the first type of viral hepatitis that was identified. Hepatitis A is a type of acute infectious disease that plays no role in the production of chronic hepatitis or cirrhosis (Merck, 377). For that reason, hepatitis A is so unlikely to present as chronic liver infection warranting service connection in veterans that it does not warrant a specific diagnostic code. We, therefore, propose to remove the title "infectious hepatitis." There are, however, a number of other conditions that may result in chronic liver disease without cirrhosis that are not included in the current schedule, including chronic viral hepatitis B and C, chronic active hepatitis, autoimmune hepatitis, hemochromatosis, and drug-induced hepatitis. These conditions have manifestations that are similar enough to allow their evaluation under a single set of criteria. We, therefore, propose to retitle diagnostic code 7345 "chronic liver disease without cirrhosis (including hepatitis B, chronic active hepatitis, autoimmune hepatitis, hemochromatosis, drug induced hepatitis, etc., but excluding bile duct disorders and hepatitis C)." We are proposing to exclude bile duct disorders from this category, although they are sometimes closely related to liver disorders, because they are addressed under other diagnostic codes in § 4.114. We propose to include hepatitis B infection (formerly called serum hepatitis), another type of viral hepatitis, in this group of conditions because, unlike hepatitis A infection, which we propose to exclude from the group, it does result in chronic liver infection in up to ten percent of cases.

A separate diagnostic code, 7354, is being proposed for hepatitis C, a type of viral hepatitis that was not identified until 1989, which can also result in chronic liver infection, cirrhosis, and malignancy of the liver. We are proposing to provide a separate diagnostic code for hepatitis C because there are still many unanswered questions about the disease, and public health epidemiologic concerns make it desirable for us to be able to track cases for statistical purposes. However, we propose to provide evaluation criteria for diagnostic code 7354 which are

identical to those we are proposing for diagnostic code 7345, since the effects are similar. Until the hepatitis C virus was identified, hepatitis C infection was often categorized as "non-A, non-B hepatitis," a term used for any type of hepatitis that could not be identified as one of the known types (A or B). For that reason, we propose to add non-A, non-B hepatitis to the title, as a condition to be evaluated under diagnostic code 7354. We also propose to require that there be serologic evidence of hepatitis C infection and that the signs and symptoms listed in the criteria be due to hepatitis C infection (because some are nonspecific findings that could be from a variety of causes).

Evaluations under diagnostic code 7345 are currently based on the extent of liver damage, the severity of gastrointestinal symptoms, the frequency and duration of disabling episodes of symptoms, whether there are symptoms of fatigue, mental depression, or anxiety, and whether dietary restriction, rest therapy, or other therapeutic measures are required. We propose to base the evaluation for diagnostic codes 7345 and 7354 in part on the total duration of incapacitating episodes resulting from the manifestations and symptoms of these conditions, and to define an incapacitating episode in notes under diagnostic codes 7345 and 7354 as a period of acute signs and symptoms severe enough to require bed rest and treatment by a physician. This is the same definition we provided in a notice of proposed rulemaking published in the **Federal Register** on February 24, 1997 (62 FR 8204) that would revise the evaluation criteria for intervertebral disc syndrome (diagnostic code 5293), another condition that would be evaluated on the basis of the total duration of incapacitating episodes. We propose to change the evaluation levels under 7345 from 100, 60, 30, 10, and zero percent to 100, 60, 40, 20, 10, and zero percent, the same levels that we proposed for the evaluation of intervertebral disc syndrome (except that we did not propose a zero-percent level for intervertebral disc syndrome), in order to maintain internal consistency in the rating schedule for conditions evaluated on the basis of the total duration of incapacitating episodes.

A zero-percent evaluation is currently assigned under diagnostic code 7345 if hepatitis is "healed, nonsymptomatic." We propose to retain the zero-percent level under diagnostic code 7345 and add it under diagnostic code 7354 for nonsymptomatic disease, but to remove

the term "healed," because chronic liver disease may in some cases be nonsymptomatic even when not healed, and would still warrant no more than a zero-percent evaluation. Retaining a zero-percent evaluation level for chronic liver disease without cirrhosis would assure an appropriate evaluation of the condition in the absence of symptoms. Ten percent of those who are infected with the hepatitis B virus go on to develop chronic liver infection, and 75–85 percent of those infected with the hepatitis C virus develop chronic liver infection. However, tests to determine whether chronic liver infection is present when there is evidence of a past history of viral hepatitis are not routine and standardized. We are, therefore, proposing that a zero-percent evaluation be assigned to all nonsymptomatic veterans who have serologic evidence of having had a hepatitis B or C virus infection in order to assure appropriate handling of later-developing sequelae of hepatitis B and C.

According to our consultants, the most common symptom of chronic liver disease is fatigue. We, therefore, propose to list fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain as symptoms of chronic liver disease that might characterize an incapacitating episode. These are all symptoms of chronic liver disease (Merck, 354–385) and are more explicit than the indefinite language, such as "gastrointestinal disturbance" and "marked symptoms," that our consultants suggested. We propose to assign a 100-percent evaluation if there are near-constant incapacitating symptoms (such as fatigue, malaise (a vague feeling of bodily discomfort), nausea, vomiting, anorexia (lack of appetite), arthralgia (joint pain), and right upper quadrant pain); a 60-percent evaluation if there are incapacitating episodes having a total duration at least six weeks during the past 12-month period, but not occurring constantly, or there is daily fatigue, malaise, and anorexia, with substantial weight loss (or other indication of malnutrition), and hepatomegaly (enlarged liver); a 40-percent evaluation if there are incapacitating episodes having a total duration of at least four weeks, but less than six weeks, during the past 12-month period, or there is daily fatigue, malaise, and anorexia, with minor weight loss and hepatomegaly; a 20-percent evaluation if there are incapacitating episodes having a total duration of at least two weeks, but less than four weeks, during the past 12-month period, or there is daily fatigue, malaise, and anorexia, but without

weight loss or hepatomegaly; a 10-percent evaluation if there are incapacitating episodes having a total duration of at least one week, but less than two weeks, during the past 12-month period, or there is intermittent fatigue, malaise, and anorexia; and a zero-percent evaluation if the condition is nonsymptomatic. These criteria encompass the usual disabling effects of this group of diseases and are in keeping with current medical information. In addition, they are more objective than the current criteria (which include such subjective terms as "minimal," "moderate," "marked," and "mild") and would thus help assure consistency of evaluations.

Although our consultants did not suggest that we remove "depression" and "anxiety" as criteria under diagnostic code 7345, we propose to do so. They are not prominent symptoms of chronic liver disease. If a mental disorder is medically determined to be secondary to liver disease, it would be separately evaluated under the mental disorders portion of the rating schedule.

In order to clarify the method of evaluation of the major sequelae of chronic liver disease, we propose to add a note under diagnostic codes 7345 and 7354 directing that sequelae of these conditions, such as cirrhosis or malignancy of the liver, be evaluated under an appropriate diagnostic code, as long as the same signs and symptoms are not used as the basis for evaluation under both 7354 and under another diagnostic code. (See 38 CFR 4.14.) We propose to add a second note under diagnostic codes 7345 and 7354 defining an incapacitating episode, as discussed above, and a third note under diagnostic code 7345 stating that hepatitis B infection must be confirmed by serologic testing in order to evaluate it under diagnostic code 7345. The criteria for the evaluation of hepatitis C under diagnostic code 7354 similarly require that there be serologic evidence of hepatitis C infection for evaluation under that code. This will enable VA to accurately determine which type of hepatitis a veteran has.

The ability to perform liver transplants is a significant medical advance that is not reflected in the current rating schedule. We, therefore, propose to add diagnostic code 7351 for liver transplants and to provide a 100-percent evaluation for an indefinite period from the date of hospital admission for transplant surgery, with a mandatory VA examination one year following hospital discharge. This would allow a reasonable period of time to assess whether rejection of the transplant or infection will occur, and

for recovery from the surgery. We propose to provide instructions that the appropriate disability rating shall then be determined based on the examination, and subject to the provisions of 38 CFR 3.105(e). 38 CFR 3.105(e) requires a 60-day notice before VA reduces an evaluation and an additional 60-day notice before the reduced evaluation takes effect. The revision would not only require a current examination to assure that all residuals are documented, but also offer the veteran more contemporaneous notice of any proposed action and expand the veteran's opportunity to present evidence showing that the proposed action should not be taken. We propose to require a minimum evaluation of 30 percent following transplant, because of the need for long-term immunosuppressive medication and its associated problems. The proposed evaluation criteria are similar to those provided in 38 CFR 4.115b for evaluation following kidney transplant and in 38 CFR 4.104 for evaluation following cardiac transplant.

The Secretary hereby certifies that the adoption of the proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. This action would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

This proposed rule has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866.

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: April 13, 2000.
Togo D. West, Jr.,
Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is proposed to be amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

2. Revise § 4.112 to read as follows:

§ 4.112 Weight loss.

For purposes of evaluating conditions in § 4.114, the term "substantial weight loss" means a loss of greater than 20 percent of the individual's baseline weight, sustained for three months or longer; and the term "minor weight loss" means a weight loss of 10 to 20 percent of the individual's baseline weight, sustained for three months or longer. The term "inability to gain weight" means that there has been substantial weight loss with inability to regain it despite appropriate therapy.

(Authority: 38 U.S.C. 1155)

3. Section 4.114 is amended by:

A. Revising diagnostic codes 7311, 7312, 7343, 7344, and 7345.

B. Adding diagnostic codes 7351 and 7354.

C. Adding a new authority citation at the end of the section.

The revisions and additions read as follows:

§ 4.114 Schedule of ratings—Digestive system.

* * * * *

	Rating
7311 Residuals of injury of the liver. Depending on the specific residuals, evaluate as adhesions of peritoneum (diagnostic code 7301), cirrhosis of liver (diagnostic code 7312), or chronic liver disease without cirrhosis (diagnostic code 7345).	100
7312 Cirrhosis of the liver, primary biliary cirrhosis, or cirrhotic phase of sclerosing cholangitis: With one of the following refractory to treatment: ascites, hepatic encephalopathy, or hemorrhage from varices or portal gastropathy (erosive gastritis), or; with persistent jaundice, generalized weakness, and substantial weight loss	100

	Rating		Rating		Rating
History of two or more episodes of ascites, hepatic encephalopathy, or hemorrhage from varices or portal gastropathy (erosive gastritis), but with periods of remission between attacks	70	Incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain) having a total duration of at least six weeks during the past 12-month period, but not occurring constantly, or; with daily fatigue, malaise, and anorexia, with substantial weight loss (or other indication of malnutrition), and hepatomegaly	60	NOTE (1): Evaluate sequelae, such as cirrhosis or malignancy of the liver, under an appropriate diagnostic code, but do not use the same signs and symptoms as the basis for evaluation under DC 7354 and under a diagnostic code for sequelae. (See §4.14.).	
History of one episode of ascites, hepatic encephalopathy, or hemorrhage from varices or portal gastropathy (erosive gastritis)	50	Incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain) having a total duration of at least four weeks, but less than six weeks, during the past 12-month period, or; with daily fatigue, malaise, and anorexia, with minor weight loss and hepatomegaly	40	NOTE (2): For purposes of evaluating conditions under diagnostic code 7345, an incapacitating episode means a period of acute signs and symptoms severe enough to require bed rest and treatment by a physician.	
Portal hypertension and splenomegaly, with weakness, anorexia, abdominal pain, malaise, and at least minor weight loss	30			NOTE (3): Hepatitis B infection must be confirmed by serologic testing in order to evaluate it under diagnostic code 7345.	
Symptoms such as weakness, anorexia, abdominal pain, and malaise	10			* * * * *	
NOTE: For evaluation under diagnostic code 7312, documentation of cirrhosis (by biopsy or imaging) and abnormal liver function tests must be present.				7351 Liver transplant.	
* * * * *		Incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain) having a total duration of at least two weeks, but less than four weeks, during the past 12-month period, or; with daily fatigue, malaise, and anorexia (without weight loss or hepatomegaly), requiring dietary restriction or continuous medication	20	For an indefinite period from the date of hospital admission for transplant surgery	100
7343 Malignant neoplasms of the digestive system, exclusive of skin growths	100	Incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain) having a total duration of at least one week, but less than two weeks, during the past 12-month period, or; intermittent fatigue, malaise, and anorexia	10	Minimum	30
NOTE: A rating of 100 percent shall continue beyond the cessation of any surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.		Nonsymptomatic	0	NOTE: A rating of 100 percent shall be assigned as of the date of hospital admission for transplant surgery and shall continue. One year following discharge, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter.	
7344 Benign neoplasms, exclusive of skin growths. Evaluate under an appropriate diagnostic code, depending on the predominant disability or the specific residuals after treatment.				7354 Hepatitis C (or non-A, non-B hepatitis).	
7345 Chronic liver disease without cirrhosis (including hepatitis B, chronic active hepatitis, autoimmune hepatitis, hemochromatosis, drug-induced hepatitis, etc., but excluding bile duct disorders and hepatitis C).				With serologic evidence of hepatitis C infection and the following signs and symptoms due to hepatitis C infection:	
Near-constant incapacitating symptoms (such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain)	100			Near-constant incapacitating symptoms (such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain)	100
				Incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain) having a total duration of at least six weeks during the past 12-month period, but not occurring constantly, or; with daily fatigue, malaise, and anorexia, with substantial weight loss (or other indication of malnutrition), and hepatomegaly	60

Rating	
<p>Incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain) having a total duration of at least four weeks, but less than six weeks, during the past 12-month period, or; with daily fatigue, malaise, and anorexia, with minor weight loss and hepatomegaly</p> <p>Incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain) having a total duration of at least two weeks, but less than four weeks, during the past 12-month period, or; with daily fatigue, malaise, and anorexia (without weight loss or hepatomegaly), requiring dietary restriction or continuous medication</p> <p>Incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain) having a total duration of at least one week, but less than two weeks, during the past 12-month period, or; intermittent fatigue, malaise, and anorexia</p> <p>Nonsymptomatic</p> <p>NOTE (1): Evaluate sequelae, such as cirrhosis or malignancy of the liver, under an appropriate diagnostic code, but do not use the same signs and symptoms as the basis for evaluation under DC 7354 and under a diagnostic code for sequelae. (See §4.14.).</p> <p>NOTE (2): For purposes of evaluating conditions under diagnostic code 7354, an incapacitating episode means a period of acute signs and symptoms severe enough to require bed rest and treatment by a physician.</p>	<p>40</p> <p>20</p> <p>10</p> <p>0</p>

(Authority: 38 U.S.C. 1155)
 [FR Doc. 00-19761 Filed 8-4-00; 8:45 am]
 BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-6844-6]

National Oil and Hazardous Substances; Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).
ACTION: Proposed deletion of the Windom Municipal Landfill Superfund Site (Site) from the National Priorities List (NPL).

SUMMARY: The EPA proposes to delete the Windom Municipal Landfill Superfund site (Site) from the NPL and requests public comment on this action. The NPL constitutes Appendix B to Part 300 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. EPA has determined that the Site currently poses no significant threat to public health or the environment, as defined by CERCLA, and therefore, further remedial measures under CERCLA are not appropriate. We are publishing this proposed rule without prior notification because the Agency views this as a noncontroversial revision and anticipates no dissenting comments. A detailed rationale for this proposal is set forth in the direct final rule. If no dissenting comments are received, the deletion will become effective. If EPA receives dissenting comments, the direct final action will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Comments concerning this Action must be received by September 6, 2000.

ADDRESSES: Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, U.S. Environmental Protection Agency (SR-6J), 77 W. Jackson, Chicago, IL 60604. Comprehensive information on this Site is available through the public docket which is available for viewing at the Site Information Repositories at the following locations: U.S. EPA Region 5, Administrative Records, 77 W. Jackson Boulevard, Chicago, IL 60604 (312)-886-0900 and the Minnesota Pollution Control Agency, 520 Lafayette Road

North, Saint Paul, Minnesota 55155-4184.

FOR FURTHER INFORMATION CONTACT: Gladys Beard Associate Remedial Project Manager at (312) 886-7253. Written correspondence can be directed to Ms. Beard at U.S. Environmental Protection Agency, (SR-6J) 77 W. Jackson Blvd., Chicago, IL 60604.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Action which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 9601-9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Dated: July 21, 2000.
William E. Muno,
Acting Regional Administrator, EPA Region V.
 [FR Doc. 00-19787 Filed 8-4-00; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00-1710, MM Docket No. 00-133, RM-9895]

Digital Television Broadcast Service; Portland, ME

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by HMW, Inc., licensee of station WPXT, NTSC Channel 51, Portland, Maine, requesting the substitution of DTV Channel 36 for its assigned DTV Channel 4 at Portland. DTV Channel 36 can be allotted to Portland, Maine, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (43-51-06 N. and 70-19-40 W.). As requested, we propose to allot DTV Channel 36 to Portland with a power of 1000 and a height above average terrain (HAAT) of 265 meters. However, since the community of Portland is located within 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian government must be obtained for this proposal.

DATES: Comments must be filed on or before September 25, 2000, and reply comments on or before October 10, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., 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: David D. Oxenford, JoEllen Masters, Fisher, Wayland, Cooper, Leader & Zaragoza, L.L.P., 2001 Pennsylvania Avenue, NW., Suite 400, Washington, DC 20006 (Counsel for HMW, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00-133, adopted August 3, 2000, and released August 4, 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.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00-19887 Filed 8-4-00; 8:45 am]

BILLING CODE 6712-01-U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 76 and 78

[CS Docket No. 00-78; FCC 00-165]

Implementation of the Cable Operations and Licensing System (COALS) to Allow for Electronic Filing

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission (FCC) proposes to amend its regulations governing the filing of

forms and applications for the Cable Services Bureau. These proposed rule changes are designed to facilitate the FCC's implementation of the Cable Operations and Licensing Systems (COALS), a new electronic filing system. The Notice constitutes part of the FCC's ongoing review of its regulations consistent with the biennial review process mandated by Section 11 of the Communications Act. COALS will enable all cable services applicants, licensees and registrants to file electronically, thus increasing the speed and efficiency of the application and filing process. COALS will also make license and cable operational information more accessible to Commission staff and will enhance the availability of cable system information to the cable industry and the public.

DATES: Comments are due on or before September 6, 2000 and reply comments are due on or before September 21, 2000. Written comments by the public on the proposed information collections are due September 6, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before October 6, 2000.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 Twelfth Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725-17th Street, NW, Washington, DC 20503 or via the Internet to springer@al.eop.gov.

FOR FURTHER INFORMATION, CONTACT: Wayne McKee (202)418-2355 or Richard Kalb (202)418-1055, Cable Services Bureau, or via the internet at wmckee@fcc.gov or rkalb@fcc.gov. For additional information concerning the information collections contained in this NPRM contact Judy Boley at 202-418-0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, CS Docket 00-78, adopted May 11, 2000 and released May 23, 2000. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC 20554, and may be purchased from the

Commission's copy contractor, International Transcription Service, (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036, or may be reviewed via the internet at <http://www.fcc.gov/csb>.

Synopsis of the Notice of Proposed Rule Making

I. Introduction

1. In this Notice of Proposed Rulemaking ("NPRM"), we seek comment on our proposal to revise the rules governing the filing of forms and applications for the Cable Services Bureau ("CSB"). These include applications in the Cable Television Relay Service (CARS microwave applications), cable television operator registrations, and aeronautical frequency usage filings. These proposed rule changes are designed to facilitate our implementation of the Cable Operations and Licensing Systems ("COALS")—a new electronic filing system. This Notice constitutes part of our ongoing review of the Commission's regulations consistent with the biennial review process mandated by Section 11 of the Communications Act.

2. COALS will enable all cable services applicants, licensees, and registrants (hereinafter referred to as "electronic filers"), for the first time, to file all license-related applications and other filings electronically, thus increasing the speed and efficiency of the application and filing process.

3. COALS will also make license and cable operational information more accessible and more usable by Commission staff in carrying out our regulatory responsibilities. This will enable the Commission staff to monitor spectrum use and competitive conditions in the cable marketplace more easily and will promote more effective implementation of our spectrum management policies.

4. COALS will also enhance the availability of cable system information to the cable industry and the public. They will be able to access all cable system information by using any World Wide Web browser. These changes will benefit not only Commission licensees, but also members of the public that have historically had little or no access to such information. COALS will also allow persons seeking to obtain licensing information to search our database and retrieve the desired information via COALS. This will be more cost-effective than obtaining copies of Commission records manually from the Commission's copy contractor or the Commission's public reference rooms. Commission orders, public

notices, and other releases will be available on the Internet without charge.

5. In addition, the cost of filing applications or obtaining information will be reduced. Applicants will be charged normal filing fees for filing applications under COALS, but will save time and resources by filing electronically.

6. This NPRM reviews our current rules regarding information filed with the Commission, and proposes modifications only where necessary to fully implement COALS. Our objective in implementing COALS is to reduce costs to the Commission, cable operators, and the public by making the filing and review process faster and simpler.

7. Many of the rule changes proposed in this NPRM are merely procedural in nature. Section 553(b)(3)(A) of the Administrative Procedures Act provides an exception from notice and comment requirements for procedural rules. However, as a result of the development of COALS, we are proposing fundamental and extensive changes to the way we receive and process license applications, cable community registrations, aeronautical notifications and Forms 320 and 325. The changes needed to introduce COALS and to effectuate electronic filing and processing of most applications and notifications are sufficiently extensive that we believe it desirable to seek public comment on the full impact these changes may have on cable filers and the public. We provide notice and seek comment because we propose to change the data collection and management mechanisms, use a universal database to prepare, analyze, and report statistics, and use these proposals to form the basis for future rulemakings, compliance actions and other Commission initiatives.

8. In this NPRM, we seek comment on the following issues and proposals:

- whether we should require mandatory or optional electronic filing;
- how the CSB's application and licensing forms can be modified to make filing less burdensome;
- consolidating, and in some cases revising, the rules that determine whether a change to a pending CARS application or existing authorization is major or minor;
- amending return and dismissal procedures for defective or incomplete applications;
- standardizing the collection of information from cable applicants and licensees;
- requiring the submission of a Taxpayer Identification Number ("TIN") or its functional equivalent by

applicants and licensees using COALS, consistent with the requirements of the Debt Collection Improvement Act of 1996; and

- eliminating unnecessary or duplicative filing and notice requirements.

A. Electronic Filing

1. Mandatory or Electronic Filing

9. *Background.* COALS gives us the capability to accept cable related forms and notifications electronically. A number of other processes within the Commission have already moved to electronic filing systems, and the Commission's policies have consistently encouraged electronic filing. The public has also requested that the Commission implement electronic filing of information wherever feasible to facilitate more user-friendly queries of Commission data. As a consequence, the Commission has recently sought comment on various changes to the rules that are intended to eliminate unnecessary filing and reporting requirements. In those proceedings, a number of commenters suggested that the Commission introduce electronic filing systems.

10. *Discussion.* With the introduction of COALS, we will have the ability to accept electronic filing of most regularly collected forms used by the Cable Services Bureau. We tentatively propose that during the second quarter of the year 2000, cable operators filing forms, applications, registrations, and notifications in the Cable Services Bureau have the option of filing electronically. We believe that allowing optional electronic filing for cable services is in the public interest because it will help to accomplish our goals of: (1) A smooth transition to COALS; (2) continual streamlining of our filing process; (3) affording parties a quick and economical means to file applications and other documents; and (4) making all filed information quickly and easily available to interested parties and the public. We believe that the effect of this option on applicants and licensees in cable services would be beneficial; indeed, COALS is intended to relieve the burden on all filers of the time and cost of paper filings. We request comment on these proposals.

11. While we propose to allow optional electronic filing for cable services, we seek comment on whether electronic filing should be made mandatory. We propose allowing optional filing because we recognize that those affected by our decision will be a diverse group, ranging from very small to very large entities. We

recognize that some applicants may not have access to computers with the hardware and capability to utilize the software necessary to submit their applications electronically. Conversely, requiring electronic filing may eliminate possible confusion in a dual filing system and expedite our transition to COALS.

12. Accordingly, we seek comment on whether electronic filing should be made optional or mandatory. Commenters advocating mandatory electronic filing should propose a timetable for the transition to such filing.

13. Section 508 of the Rehabilitation Act of 1973, as amended, requires federal agencies to make materials available in accessible formats for persons with disabilities. Commenters may address ways to make COALS more accessible to individuals with disabilities in light of this obligation.

14. Finally, we request comment on whether it would benefit applicants, licensees, and registrants subject to electronic filing if the Commission maintained computer facilities at the Washington, DC headquarters for the public to use to file forms electronically. Commenters should discuss the resources needed to support this, e.g., the number of computers necessary for public use. We note, however, that any facility (e.g. public libraries, universities, "Internet cafes," etc.) that has Internet access capabilities can be used for COALS electronic filings. It is our intention to make electronic filing as widely valuable and successful as possible, and we request public input for further suggestions to meet this goal.

2. Electronic Payment

15. *Background.* Current Commission rules generally require applications or filings that require a fee be sent to the Commission's lockbox bank in Pittsburgh, Pennsylvania, with the correct fee and form.

16. *Discussion.* With implementation of COALS, we propose to allow cable applicants and filers to pay their filing costs electronically or to be sent to the Commission's lock box bank manually.

3. Electronic Signature

17. *Background.* Current Commission rules require that applicants and licensees provide original hand-written signatures on registrations and applications filed with the Commission.

18. *Discussion.* In allowing for electronic filing, COALS will allow applicants and licensees to sign filings with the Commission electronically. We propose that an electronic signature shall consist of the name of the

applicant transmitted electronically via COALS and entered on the application as a signature. We note that COALS will require pre-registration and that system users will be assigned a system identifier and associated password prior to their use of an electronic signature, as further discussed in paragraph 22.

4. Copy Requirements

19. *Background.* Current Commission rules require the filing of a specified number of copies of all applications and papers filed with the Commission in order to ensure that appropriate staff have access to the documents and that timely information is provided to the public.

20. *Discussion.* In this proceeding, we propose to eliminate the current copy requirements that are no longer necessary. We tentatively conclude that reducing the number of copies that parties have to file would serve the public interest because such requirements are unnecessary under COALS. In the past, multiple copies were required to make application and licensing information available to the public and to Commission employees. COALS, however, provides an unprecedented degree of accessibility to this information. Whether applications or pleadings are filed electronically or manually, all information will be available online to interested parties and to the Commission's staff. After implementation of COALS, any data that are filed manually will be entered or scanned as necessary and will be available in the same fashion as electronically filed information. Thus, there will no longer be a need for an applicant to file numerous paper copies. We propose to amend our rules so that applicants who file applications electronically will not be required to provide paper copies. We seek comment on these proposals and tentative conclusions.

5. Use of Taxpayer Identification Numbers

21. *Background.* In 1996, Congress enacted the Debt Collection Improvement Act ("DCIA") as part of an effort to increase collection of delinquent government debts from private entities. As a result of DCIA, the Commission and executive agencies are required to monitor and provide information about their regulatees to the U.S. Treasury. This provision includes a requirement that the Commission collect Taxpayer Identifying Numbers ("TIN") and share them with the U.S. Treasury to ensure that the Commission does not refund monies to entities that have an outstanding debt to the federal

government. TINs are 9-digit identifiers required of all individuals and employers to identify their tax accounts. Individuals use their Social Security Number as the TIN, while employers use the Employer Identification Number ("EIN") issued by the IRS to all employers. TINs are an integral part of the DCIA system and are necessary for the collection of delinquent debt owed to federal agencies. The TIN matches payment request with delinquent information. As a result, federal agencies have been required to share the TINs of benefit recipients since April 26, 1996, the effective date of DCIA. The Financial Management Service of the U.S. Treasury has recommended that agencies obtain the TIN when an agency first has direct contact with a person.

22. *Discussion.* The Commission has already taken steps to ensure proper collection of TINs from parties seeking to make filings using COALS. Development of COALS will require that we continue to collect TINs from CSB applicants and licensees because some of these parties may be the recipients of a refund for overpayment of filing and/or regulatory fees or auction bids.

23. We further propose that all parties seeking to file applications through COALS be required to submit a TIN as a prerequisite for using the system, for purposes of fee payment verification, and subsequently, that filers be issued a COALS system identifier and associated password for access to the electronic system. Under this proposal, individuals would use their Social Security Number as their TIN, while other entities would use their EINs as their TIN. Parties submitting manually filed forms and applications will continue to be required to supply their TIN on forms and applications, where applicable, because all such information will be placed on COALS and a TIN is necessary to track these applications.

24. We also note that the TIN is part of the required information for current manual and proposed electronic filers as identifiers for cable filing purposes, and is therefore available to the general public searching records. For example, the cable television registration statement requires a social security or entity identification number, either of which can be a TIN. Accordingly, this number will be available to those accessing a particular registration statement. We seek comment on whether a TIN number, for privacy and other reasons, should not be available to those searching the database electronically, even though the number will be available to those searching

through the same records which may have been filed manually.

25. We note that under the proposal, parties other than cable operators and CARS licensees would have some access to COALS without providing a TIN. For example, parties seeking to find information electronically through COALS would not be required to submit a TIN, but rather would be permitted to access COALS using a general search criteria defined by COALS. Members of the public also would not be required to register to simply view applications or search the COALS database. We seek comment on whether requiring the use of TINs with the COALS systems would satisfy the requirements of the DCIA and would provide a unique identifier for parties filing applications with COALS that would ensure that the system functions properly. We tentatively conclude that the TIN is the logical choice for the system identifier because it is unique to each licensee and applicant, and these parties will likely have already obtained a TIN from the Internal Revenue Service in order to conduct their business. However, we note that it is still to be determined whether the TIN will be used as the COALS login.

B. Cable Services Bureau Operational Procedures

1. New Forms

26. *Background.* Currently, cable operators are required to file a registration statement with the Commission, which includes their legal name, mailing address and other operator information. Any change to the operator's legal name, mailing address or operational status must also be filed with the Commission. The operator is given the choice as to the format for the submission of this information, as no FCC forms for the provision of this information currently exist.

27. *Discussion.* We propose to create three new forms for the registration process. The first new form, FCC Form-xxx, will formalize and standardize the format for the cable television registration statement. At the same time, we propose to eliminate the requirement that the Commission give public notice of cable television registration statements. It has been our experience that registration statement public notices are not generally used to track registration data and do not generate public comment. Further, we propose to eliminate the requirement that 47 CFR 76.12 registrants disclose the date upon which they served 50 or more subscribers. This requirement no longer has a regulatory purpose. The second

new form, FCC Form-xxx, will formalize and standardize the format when a cable operator has a change in name, mailing address or operational status. The third form, FCC Form-xxx, will formalize and standardize the manner in which cable operators provide information to the Commission regarding usage of aeronautical frequencies. Under 47 CFR 76.615(b)(6), operators are required to provide a description of their routine monitoring procedures used for compliance with the aeronautical frequency usage rules. To facilitate electronic filing and review, we propose to allow operators to check a box in Form-xxx which certifies that their monitoring procedures fully comply with the requirements of § 76.614 of the Commission's rules. As a whole, these forms will facilitate electronic filing by creating a uniform format by which all cable operators provide their information, making it easier for Commission personnel to process the filings. In addition, we propose to modify FCC Form 327, used for applications in the Cable Television Relay Service, by revising Schedule C to eliminate redundant channeling and source information that are no longer required and transferring transmission tower information from the transmit D schedule (previously D[00]) to the C schedule. Furthermore, we intend to modify the Form 327 to conform with other electronically filed forms currently in use within the Commission and to eliminate requested information that is no longer necessary. We seek comment on this proposal.

2. Returns and Dismissals of Incomplete or Defective Submissions

28. *Background.* Currently, filing with the Commission involves the completion of a form and forwarding the completed application to the Commission. When incomplete or incorrectly filed forms or applications are received, the applicant is either contacted by phone or mail to correct the problem, or the submission is returned in accordance with CSB policies. The COALS filing system will reduce filing errors resulting from incomplete filings. For example, COALS will pre-fill ownership and address information for applicants who are already Commission licensees. It will also interactively check that required elements of applications are completed and prompt applicants to correct errors. We anticipate that this system will expedite the grant of applications and help to ensure the integrity of the data in our licensing database.

29. There will be two means for parties to electronically file applications

with the Commission: batch and interactive. Batch filing involves data transmission in a single action, without any interaction with the Commission's COALS system. Batch filers will follow a set Commission format for entering data. Batch filers will then send, via file transfer protocol, batches of data to the Commission for compiling. COALS will compile such filings overnight and respond the next business day with a return or dismissal of any defective filings. Thus, batch filers will not receive immediate correction from the system as they enter the information. Interactive filing involves data transmission with screen-by-screen prompting from the Commission's COALS system. Interactive filers will receive prompts from the system identifying data entries outside the acceptable ranges of data for the individual fields at the time the data entry is made. Because interactive filers will be able to enter corrected information in real time, they are less likely to submit applications that are incomplete or incorrect.

30. *Discussion.* We propose to conform our filing rules for all CSB filers so that batch, interactive, and, where applicable, manual filers will be subject to the same requirements and procedures for defective or incomplete submissions. Interactively filed submissions will be screened in real time by the COALS system; therefore, errors will be unlikely but may occur in some instances where erroneous information is entered. In the case of batch and manually filed submissions, incomplete or erroneous filings will not be detected until after the submission is filed. Manually filed submissions, if erroneous, will not be returned until the CSB staff reviews the submission and detects the problem. In all cases, regardless of filing method, except as indicated below, we propose that a filer who submits a filing that is accepted by COALS, but is found subsequently to have missing or incorrect information, be notified of the defect. We seek comment on allowing operators 30 days from the date of this notification to correct or amend the submission if the amendment is minor. If the applicant files a timely corrected application, it will ordinarily be processed as a minor amendment in accordance with the Commission's rules. Thus it will have no effect on the initial filing date of the application or the applicant's filing priority. If, however, the amendment made by the applicant is not a simple correction but constitutes a major amendment to the application, it will be governed by the rules and procedures

applicable to major amendments, i.e., it will be treated as a new application with a new filing date. Finally, if the applicant fails to submit an amended application within the period specified in the notification, the application will be subject to dismissal for failure to prosecute. Notwithstanding the above, we propose that in all cases, submissions without a sufficient fee and manually filed applications that do not contain a valid signature will be immediately dismissed. We seek comment on these proposals.

C. Cable Services Bureau Licensing Procedures (CARS and Microwave Licenses)

1. Standardization of Major and Minor Filing Rules

31. *Background.* Under current CARS rules, the standards for distinguishing between major and minor filings, particularly amendments to applications and modifications of licenses, are defined under § 78.109 of the Commission's rules. The distinction between major and minor filings has significant procedural consequences in the application process, because a major amendment to an application causes the application to be considered newly filed, while a minor amendment generally has no impact on the filing date. Distinguishing between major and minor modifications to license applications is important, because major modifications are subject to the same public notice requirement as initial applications. Minor modifications, by contrast, do not trigger public notice obligations and, on occasion, do not require prior Commission approval.

32. *Discussion.* The implementation of COALS provides a unique opportunity to implement a single set of uniform standards for defining major and minor amendments and modifications of all CARS licenses. The Commission is authorized to adopt rules classifying amendments as either major or minor. Therefore we propose to adopt a single rule, as set out below, that defines categories of major and minor changes for purposes of defining whether an amendment to an application or request for license modification is major or minor. We are not, however, proposing to revise the types of applications which require public notice or frequency coordination.

MAJOR

Based on the above criteria, we tentatively conclude that the following changes should be considered major:

- Any increase in emission bandwidth beyond that authorized;

- Any change in the transmitting antenna system of a station, other than a CARS pickup station, including the direction of the main radiation lobe, directive pattern antenna gain or transmission line;
 - Any horizontal change in the location of the antenna, other than a CARS pickup station transmitter;
 - Any change in the type of modulation;
 - Any change in the location of a station transmitter, other than a CARS pickup station transmitter, except a move within the same building or upon the tower or mast or a change in the area of operation of a CARS pickup station;
 - Any change in frequency assignment including polarization;
 - Any change in authorized operating power;
 - Any substantial change in ownership or control;
 - Any addition or change in frequency, excluding removing a frequency;
 - Any request for partitioning or disaggregation;
 - Any modification or amendment requiring an environmental assessment (as governed by 47 CFR 1.1301–1319);
 - Any request requiring frequency coordination; or
 - Any modification or amendment requiring notification to the Federal Aviation Administration as defined in 47 CFR part 17 subpart B.

MINOR

We tentatively conclude that any change not specifically listed above as major should be considered minor. This would include:

- Any name change not involving change in ownership or control of the license;
- Changes to administrative information, e.g., address, telephone number, or contact person.

33. We further propose to allow licensees to implement minor technical or physical modifications to their facilities without prior Commission approval; licensees would be required only to notify the Commission within 30 days of implementing the change. However, we note that there are times that applicants and licensees may submit multiple amendments or modifications that individually would be considered minor changes, but that, when considered together, would constitute a major change. In this connection, we propose that multiple minor changes be considered a major change to the extent that their cumulative effects relative to the original authorization or the last major change exceed the threshold(s) set forth

above as major changes. We seek comment on this proposal. Commenters should address the standard we should adopt to alert applicants and licensees that multiple minor amendments or modifications will be considered a major change.

2. Filing of Pleadings Associated with Applications

34. *Background.* Currently, § 1.49 of the Commission's rules allows pleadings and documents filed in most Commission proceedings to be filed electronically.

35. *Discussion.* Once COALS is implemented, we intend to enhance COALS to allow pleadings and informal requests for Commission actions associated with applications or licenses in cable services to be filed electronically. Such pleadings include petitions to deny, petitions for reconsideration, applications for review, comments, motions for extension of time, and subsequently filed pleadings related to such filings (i.e., oppositions and replies). We expect such an enhancement to COALS to be forthcoming and that the system will be able to accept pleadings prepared in several popular software formats. In anticipation of such an enhancement, we propose to allow electronic filing of pleadings regarding CARS applications as an option, rather than a requirement. As a procedural example, electronic filers will be queried regarding which application is at issue. This query will enable us to easily associate pleadings with related applications and make the pleadings accessible to the public. In addition, parties submitting pleadings via COALS will continue to be required to service paper copies on all interested parties. We propose to allow electronic service where the party to be served consents in advance in their pleadings. We propose that when a party has agreed to electronic service of a document, the three-day mailing rule for computation of time purposes is inappropriate, and that service will be considered the same as facsimile service. We seek comment on this proposal.

3. Letter Requests

36. *Background.* The Commission's rules currently permit CARS licensees to request certain actions by letter instead of with a formal application filing. Each year CSB receives hundreds of letter requests, which must be processed manually. In addition, Section 308(a) of the Communications Act states that formal applications are not required during national

emergencies or under other exceptional circumstances ("Special Situations")

37. *Discussion.* We seek comment on requiring requests relating to licenses or applications to be filed using COALS forms rather than continuing to accept and process letter requests. Commenters should address whether we should eliminate letter filings for applications, modifications, renewals, amendments, extensions, cancellations, special temporary authorizations, and name and address changes, except for the Special Situations set forth in Section 308(a) of the Communications Act. We note that our forms are widely available to the public on the FCC's web page and through a fax-on-demand service, and their use should be far less burdensome for the public than drafting a letter request. Parties can call 1-202-418-0177 from the handset of any fax machine and follow the recorded instructions. Using a form instead of a letter will also enable Commission staff to handle requests more quickly and accurately. We also note that even if manually filed with the Commission, COALS forms are more likely than a letter to be sent directly to the appropriate Bureau and division for processing. In addition, many requests for minor modifications could, if filed on a form, be automatically granted, thus relieving the Commission of a significant processing burden. Nonetheless, we are mindful that it may be unduly burdensome for some licensees to use a specific form rather than a letter to request minor changes to an application or license, such as a change of address. Therefore, interested parties should address whether letter requests should be permitted under certain circumstances, and if so, identify those circumstances.

D. Collection of Licensing and Technical Data

1. Overview

38. In reviewing our processing functions to adapt them to electronic filing, we propose to eliminate some existing data collection requirements and licensing requirements that no longer serve a useful purpose or that can be further streamlined. We seek comment on the types of technical data that we should collect from applicants and licensees, and whether there are particular data collection requirements that should be either added or deleted.

2. Change to North American Datum 83 Coordinate Data

39. *Background.* To perform its licensing role, CSB requires that certain applicants submit coordinate data with

their applications. Where applicable, applicants are required to submit coordinate data using the 1927 North American Datum ("NAD27") geographical survey. A more recent North American Datum ("NAD83") was completed in 1983, which provides updated coordinate data. NAD83 was adopted as the official coordinate system for the United States in 1989. On September 1, 1992, we issued a public notice noting the change and stating that we would be converting our databases to NAD83. At that time, however, in order to provide sufficient time to study the changes, we allowed applicants to continue indefinitely to provide coordinate data using NAD 27.

40. *Discussion.* We tentatively conclude that use of NAD83 will result in more accurate licensing decisions via the COALS system, and will also conform with the current Federal Aviation Administration regulations, which require the use of NAD83 data. In addition, it will conform with the Antenna Structure Registration ("ASR") system currently in use by the Commission's Wireless Telecommunications Bureau. We propose that all cable services submissions be required to provide such data using the NAD83 datum for sites located in the continental United States, Puerto Rico, the U.S. Virgin Islands, Alaska, Hawaii, Guam, American Samoa, and offshore sites adjacent to these areas (e.g., the Gulf of Mexico) to be expressed in terms of latitude and longitude referenced to NAD83. Sites located in the Northern Mariana Islands, Midway Island, and Wake Island should continue to be referenced to the applicable local datum. This exception for the Pacific insular areas is necessary because NAD83 is not applicable to these areas. We seek comment on our tentative conclusion and proposal.

II. Conclusion

41. We have set forth proposals to allow COALS to function more efficiently. A more efficient and fully functional COALS will mean that licensing information will be widely available to members of the public. We also believe that development of full electronic filing and widely available databases for the cable services will shorten application filing times for applicants, make the most recent data available to them concerning cable operators and other spectrum uses, and relieve the administrative burden on this Commission, enabling us to operate with greater efficiency. Accordingly, we tentatively conclude that it is in the public interest to implement the electronic filing of applications and

other documents, and that COALS implementation, as well as the combined application and processing rules proposed herein, will help achieve that goal.

III. Procedural Matters

A. Initial Regulatory Flexibility Analysis

42. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission is incorporating an Initial Regulatory Flexibility Analysis ("IRFA") of the expected impact on small entities of the policies and proposals in this NPRM. Written public comments concerning the effect of the proposal in the NPRM, including the IRFA, on small businesses are requested. Comments must be identified as responses to the IRFA and must be filed by the deadlines for the submission of comments in this proceeding. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.

43. *Need for Action and Objective of the Proposed Rule Change.* We undertake this proceeding to facilitate implementation of the COALS electronic filing system, so that cable services applicants and associated parties may file documents with greater speed and efficiency. The system will also make license and cable operational information more accessible to the Commission's staff, as well as the cable industry and the general public.

44. *Legal Basis.* The authority for the action proposed for the rulemaking is contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended.

45. *Description and Estimate of the Number of Small Entities Impacted.* The IRFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act. Under the Small Business Act, a small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration.

46. The Commission has developed its own definition of a "small cable

company" and "small system" for the purpose of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1,439 cable companies that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and other may have been involved in transactions that caused them to be combined with other cable companies. Consequently, we estimate that there are fewer than 1,439 small entity cable companies that may be affected by the proposed rules changes in the Notice. The Commission's rules also define a "small system," for the purposes of cable rate regulation, as a cable system with 15,000 or fewer subscribers. We do not request nor do we collect information concerning cable systems serving 15,000 or fewer subscribers and thus are unable to estimate at this time the number of small cable systems nationwide.

47. The Communications Act also contains a definition of a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers is deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

48. *Description of Projected Reporting, Recordkeeping, and other Compliance Requirements:* The Commission is proposing to reduce the burdens of certain reporting or information collection requirements.

49. *Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered:* The RFA requires an

agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. The Notice solicits comments on all alternatives to organize the electronic filing system. Any significant alternatives presented in the comments will be considered. In addition, we seek comment on whether electronic filing should be made optional or mandatory. For additional discussion of the effect on small business, see paragraphs 9 through 14. Small entities are encouraged to comment on this proposed rule change.

50. Federal Rules that May Overlap, Duplicate, or Conflict with the Proposed Rules: None.

B. Ex Parte

51. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

C. Filing of Comments and Reply Comments

52. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before [date] and reply comments on or before [Date]. All relevant and timely comments will be considered before

final action is taken in this proceeding. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24,121 (1998).

53. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address.>" A sample form and directions will be sent in reply.

54. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications

Commission, 445 Twelfth Street, S.W., TW-A325, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

Initial Paperwork Reduction Act of 1995 Analysis

This NPRM contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104-13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the function of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00-19895 Filed 8-4-00; 8:45 am]

BILLING CODE 6712-01-P

Notices

Federal Register

Vol. 65, No. 152

Monday, August 7, 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 COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Quarterly Survey of State & Local Tax Revenue.

Form Number(s): F-71, F-72, F-73.

Agency Approval Number: 0607-0112.

Type of Request: Extension of a currently approved collection.

Burden: 5,957 hours.

Number of Respondents: 5,906.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Census Bureau is requesting a three-year extension of the current expiration date of the Quarterly Survey of State & Local Tax Revenue. These tax collections, amounting to nearly \$700 billion annually, constitute almost one-half of all governmental revenues. Quarterly measurement of and reporting on these massive fund flows provides valuable insight into trends in the national economy and that of individual states. Information collected on the type and quantity of taxes collected gives comparative data on how the various levels of government fund their public sector obligations. These data are included in the quarterly estimates developed by the Bureau of Economic Analysis and are widely used by state revenue and tax officials, academicians, media representatives, and others.

The Census Bureau uses three forms to collect state and local government tax data for this long established data series. The Quarterly Survey of Property Tax Collections (form F-71) is sent to 5,800 local government tax collecting agencies in 530 county areas. While some counties are served by a single county

level tax-collecting agency, others have county, city, township, and even school district collectors. Each agency is asked to report the total property tax collections during the past quarter (regardless of which governments ultimately receive the monies).

Form F-72, State Tax Collections-Quarterly Survey, is sent to a state level revenue, finance, or budget agency in each state to report tax collection data for the preceding 3-month period.

The Quarterly Survey-Selected Local Taxes (form F-73) goes to 55 local tax collecting agencies known to have substantial collections of local general sales and/or local individual income taxes.

Affected Public: State, local or Tribal government.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Section 182.

OMB Desk Officer: Susan Schechter, (202) 395-5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent on or before September 6, 2000, to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: August 1, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00-19866 Filed 8-4-00; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Census Bureau

Report of Privately-Owned Residential Building or Zoning Permits Issued (Building Permits Survey)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing

effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 6, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to G. Daniel Sansbury, Census Bureau, Room 2105, FOB 4, Washington, DC 20233-6900, (301) 457-1321 (or via the Internet at g.daniel.sansbury@ccmail.census.gov).

SUPPLEMENTARY INFORMATION

I. Abstract

The Census Bureau plans to request a three year extension of the currently approved Form C-404, Building Permits Survey. The Census Bureau produces statistics used to monitor activity in the large and dynamic construction industry. Given the importance of this industry, several of the statistical series are key economic indicators. Two such series are: (a) Housing Units Authorized by Building Permits; and (b) Housing Starts. Both are based on data from samples of permit-issuing places. These statistics help state and local governments and the Federal Government, as well as private industry, to analyze this important sector of the economy.

The Census Bureau uses Form C-404 to collect data to provide estimates of the number and valuation of new residential housing units authorized by building permits. We use the data, a component of the index of leading economic indicators, to estimate the number of housing units started, completed, and sold, if single-family, and to select samples for the Census Bureau's demographic surveys. Policymakers, planners, businessmen/women, and others use the detailed

geographic data collected from state and local officials on new residential construction authorized by building permits to monitor growth and plan for local services and to develop production and marketing plans. The Building Permits Survey is the only source of statistics on residential construction for states and smaller geographic areas.

II. Method of Collection

We collect this information by mail and electronically through files we download or receive on diskettes.

Monthly, we collect this information by mail for 8,170 permit-issuing jurisdictions and electronically for 550 jurisdictions. Annually, we collect this information by mail for 10,180 jurisdictions.

III. Data

OMB Number: 0607-0094.

Form Number: C-404.

Type of Review: Regular submission.

Affected Public: State and local governments.

Estimated Number of Respondents: 18,900.

Estimated Time per Response: 16 minutes for monthly respondents who report by mail, 3 minutes for monthly respondents who report electronically, and 25 minutes for annual respondents who report by mail.

Estimated Total Annual Burden Hours: 30,716.

Estimated Total Annual Cost: \$507,121.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 1, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00-19867 Filed 8-4-00; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080100B]

Northeast Region Permit Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 6, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington, DC 20230 (or via Internet at lengelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments(s) and instructions should be directed to Allison Ferreira, NMFS, 1 Blackburn Drive, Gloucester, MA 01930 (978-281-9103).

SUPPLEMENTARY INFORMATION:

I. Abstract

Any individual or organization participating in Federally-controlled fisheries is required to obtain permits. The purpose and use of permits is to: (1) Register fishermen, fishing vessels, fish dealers and processors, (2) list the characteristics of fishing vessels and/or dealer/processor operations, (3) exercise influence over compliance (e.g. withhold issuance pending collection of unpaid penalties), (4) provide a mailing list for the dissemination of important information to the industry, (5) register participants to be considered for limited entry, and (6) provide a universe for data collection samples. Identification

of the participants, their gear types, vessels, and expected activity levels is an effective tool in the enforcement of fishery regulations. This information is needed to measure the consequences of management controls as well. Participants in certain fisheries may also be required to notify NOAA before fishing trips for the purpose of observer placement and to make other reports on fishing activities.

II. Method of Collection

Initial permit applications are made by form. After initial permit issuance, a pre-printed permit renewal form is generated via computer using current permit information. This form is then sent to the permit holder for updating. If no changes to the pre-printed form are required, the applicant simply needs to sign the form and return it with any other information (i.e. current state registration or Coast Guard document) required for permit renewal.

Automated reporting by means of a vessel monitoring system (VMS) is required for all vessels issued a full-time or part-time limited access sea scallop permit, or issued an occasional limited access sea scallop permit when fishing under the Georges' Bank Exemption Program, or scallop vessels fishing under the small dredge program. All remaining limited access multispecies, monkfish, and scallop vessels are required to report via a call-in system. Vessel owners issued a limited access multispecies, monkfish, occasional scallop, or combination permit may voluntarily elect to use the VMS in place of the call-in system. This reporting is required in order to monitor: (1) Usage of days-at-sea allocations, (2) compliance with vessel layover requirements, (3) compliance with "days-out-of-the-fishery" requirements, (4) compliance with closed area regulations, and (5) compliance with exempted fishery regulations.

III. Data

OMB Number: 0648-0202.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Businesses and other for-profit organizations; individuals or households; and State, Local or Tribal Governments.

Estimated Number of Respondents: 43,203.

Estimated Time Per Response: Preprinted renewal forms require an estimated 15 minutes to complete, while an initial application requires an estimated 30 minutes per response. In order to obtain an Atlantic Bluefish Vessel permit an applicant would need

to complete a separate permit application, at an estimated response time of 30 minutes. Dealer permit applications take an estimated 5 minutes to complete. The vessel operator permit application is estimated to take an average of 1 hour to complete due to the color photograph submission requirement. Limited access vessel upgrade or replacement applications take approximately 3 hours to complete. Applications for retention of limited access permit history require an estimated 30 minutes. Applicants are expected to spend approximately 3 hours gathering and presenting the documentation needed for any limited access permit appeal.

Limited access multispecies, combination, occasional scallop, and monkfish vessels must notify NOAA via the call-in system of the start date and end date for each fishing trip. The estimated time per response is 2 minutes. It is estimated to take multispecies and monkfish vessels approximately 3 minutes to declare blocks of time out of the gillnet fishery. The burden of vessel monitoring for full-time and part-time limited access scallop vessels or authorized multispecies, combination and occasional scallop vessels is estimated to be 1 hour for installation of VMS unit, 5 minutes for verification of installation of the VMS unit, and 30 seconds per poll for automated polling of vessel position. Vessels required to have a fully functional VMS unit at all times may request to turn off the VMS (power down exemption) at approximately 30 minutes per request. Requests for observer coverage are estimated to require 2 minutes per request.

Limited access vessels fishing under DAS requirements that have assisted in Coast Guard search and rescue operations or assisted in towing a disabled vessel may apply for Good Samaritan credits at a burden of 30 minutes per applicant.

Owners or operators of vessels seeking to participate in the Cultivator shoal whiting, mid-water trawl, purse seine, Nantucket shoal dogfish, Southern New England (SNE) little tunny gillnet, or SNE cod landing limit exemption programs must request a letter of authorization from the Regional Administrator (letter of authorization). The estimated time required to request a letter of authorization is 5 minutes. Vessels fishing in the NAFO Regulatory Area that wish to be exempt from multispecies regulations while transiting the EEZ with multispecies on board, or landing multispecies in U.S. ports, must request a letter of

authorization (5 minutes) in addition to possessing a valid High Seas Fishing Compliance permit under 50 CFR Part 300. A letter of authorization (5 minutes) is also required for permitted vessels intending to transfer selected species from one vessel to another as follows: Loligo and butterfish moratorium permit or Illex moratorium permit and vessels issued a mackerel or squid/butterfish incidental catch permit that intend to transfer Loligo, Illex or butterfish; vessels issued a multispecies or scallop permit that intend to transfer species other than regulated species; and multispecies vessels intending to transfer up to 500 lbs. of combined small-mesh multispecies per trip for use as bait.

Owners of charter/party vessels intending to fish in the Nantucket Lightship Closure Area must request a letter of authorization from the Regional Administrator, estimated to take 5 minutes. Vessels fishing under Charter/Party regulations in Gulf of Maine closed areas must obtain a Charter/Party Exemption Certificate for Gulf of Maine Closed Areas, at an estimated 2 minutes per request.

Owners of summer flounder vessels seeking to participate in the summer flounder small mesh exempted fishery must apply for a permit from the Regional Administrator, at an estimated 5 minutes per application. Vessels participating in the state waters winter flounder exemption must obtain a certificate approved by the Regional Administrator and issued by the state agency authorizing the vessel's participation in the exempted fishery. The request for such a certificate is estimated to take 2 minutes.

Limited access scallop vessels fishing under the scallop DAS program must request a letter of authorization, with an estimated burden of 5 minutes, in order to fish for scallops with trawl nets. Limited access sea scallop vessels wishing to participate in either the state waters DAS exemption program or the state waters gear exemption program must notify the Regional Administrator by VMS or call-in notification. Participants in the sea scallop state waters exemption programs using VMS notification must notify the Regional Administrator prior to the first trip in the exemption program and prior to the first planned trip in the EEZ, at an estimated 2 minutes per response. Participants in these exemption programs using the call-in system must notify the Regional Administrator at least 7 days prior to fishing under the exemption, at an estimated 2 minutes per call. If participants using the call-in system wish to withdraw from either

state waters exemption program prior to the end of the 7-day designated exemption period requirement, they must also call the Regional Administrator to notify of early withdrawal, at an estimated 2 minutes per call.

Surf clam and ocean quahog vessel owners or operators are required to call the National Marine Fisheries Service (NMFS) Office of Law Enforcement nearest to the point of offloading prior to the departure of the vessel from the dock. It requires approximately 2 minutes for a vessel owner or operator to notify law enforcement of the vessels departure from the dock to fish for surf clams or ocean quahogs in the EEZ.

In the lobster fishery, initial lobster area designations are estimated to take 5 minutes; requests for additional tags are estimated to take 2 minutes; and notification of lost tags is estimated to take 3 minutes.

In the Northeast multispecies fishery, a request for change in permit category designation requires approximately 2 minutes, and a request for transit to another port by a vessel required to remain in the GOM cod trip limit takes 2 minutes. For vessels fishing under the GOM cod landing limit for the monkfish fishery, an area declaration is estimated to take 3 minutes.

In the gillnet fisheries for multispecies and monkfish, the burden estimate for calling out of the fishery is 3 minutes. Gillnet category designation, including initial requests for gillnet tags, requires approximately 10 minutes. Requests for additional tags require an estimated 2 minutes. Notification of lost tags and requests for replacement tag numbers also require an estimated 2 minutes. It will take approximately 1 minute to attach each gillnet tag.

Requests for state quota transfers in the bluefish, summer flounder and scup fisheries are estimated to require 1 hour.

Estimated Total Annual Burden Hours: 36,872.

Estimated Total Annual Cost to Public: \$1,138,233.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the

use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 31, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00-19924 Filed 8-4-00; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072800B]

Marine Mammals; File No. P368D

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

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Dr. James T. Harvey, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039-0450, has requested an amendment to scientific research Permit No. 938.

DATES: Written or telefaxed comments must be received on or before September 6, 2000.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713-2289); and

Regional Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (907/586-7221).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no

later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Simona Roberts or Ruth Johnson, 301/713-2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 938, issued on February 2, 1995 (60 FR 7753) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 938 authorizes the permit holder to take various species of marine mammals of the suborders Mysticeti, Odontoceti, Pinnipedia, and southern sea otter annually during: aerial and vessel surveys, behavioral observations, photographic identification, and VHF and TDR tagging. On August 16, 1999 the permit was amended to include authorization to place implantable and surface VHF tags and TDRs on up to 20 killer whales (*Orcinus orca*) off the California coast. The permit holder now requests authorization to place implantable VHF and TDR tags on up to 8 killer whales in southeast Alaska.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 1, 2000.

Ann D. Terbush,

Division Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service,

[FR Doc. 00-19925 Filed 8-4-00; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF DEFENSE

Defense Contract Audit Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Contract Audit Agency, DOD.

ACTION: Notice to Amend Records Systems.

SUMMARY: The Defense Contract Audit Agency is amending two systems of

records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. DCAA is also updating its address directory.

DATES: The actions will be effective on September 6, 2000 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Defense Contract Audit Agency, Information and Privacy Advisor, CMR, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060-6219.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall at (703) 767-1005.

SUPPLEMENTARY INFORMATION: The Defense Contract Audit 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 actions are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record systems being amended are set forth below followed by the notices, as amended, published in their entirety.

Dated: July 31, 2000.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

RDCAA 160.5

SYSTEM NAME:

Travel Orders (*May 18, 1999, 64 FR 26947*).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete 'bills of lading, vouchers, contracts' and insert 'transportation authorization, agreements/contracts'.

* * * * *

RDCAA 160.5

SYSTEM NAME:

Travel Orders.

SYSTEM LOCATION:

Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060-6219; DCAA Regional Offices; and field audit offices, whose addresses may be obtained from their cognizant regional office. Official mailing addresses are published as an appendix to the agency's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any DCAA employee who performs official travel.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains individual's orders directing or authorizing official travel to include approval for transportation of automobiles, documents relating to dependents travel, transportation authorization, agreements/contracts and any other documents pertinent to the individual's official travel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C.133 and DoD Directive 5105.36 which is published in 32 CFR part 357.

PURPOSE(S):

To document all entitlements, authorizations, and paperwork associated with an employee's official travel.

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' that appear at the beginning of DCAA's compilation of systems of records notices 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.

RETRIEVABILITY:

By fiscal year and alphabetically by surname. May be filed in numerical sequence by travel order number.

SAFEGUARDS:

Under control of office staff during duty hours. Building and/or office locked and/or guarded during nonduty hours.

RETENTION AND DISPOSAL:

Records are destroyed after four years.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Resources, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060-6219; Regional Directors, DCAA; and Chiefs of Field Audit Offices, whose addresses may be obtained from their cognizant regional office. Official

mailing addresses are published as an appendix to the agency's compilation of record system notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060-6219.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060-6219.

The request should contain the full name of the individual, current address and telephone number, and current business address.

Personal visits may be made to those offices listed in DCAA's official mailing addresses published as an appendix to DCAA's compilation of record system notices. In personal visits the individual should be able to provide acceptable identification, that is, driver's license or employing office's identification card.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Administrative offices; personnel offices; servicing payroll offices; employee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 590.8

SYSTEM NAME:

DCAA Management Information System (FMIS/AMIS) (November 20, 1997, 62 FR 62003).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'DCAA Management Information System (DMIS).

SYSTEM LOCATION:

Delete entry and replace with 'Defense Contract Audit Agency, Information Technology Division, 4075

Park Avenue, Memphis, TN 38111-7492.'

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete from entry 'and contract'.

* * * * *

RDCAA 590.8

SYSTEM NAME:

DCAA Management Information System (DMIS).

SYSTEM LOCATION:

Defense Contract Audit Agency, Information Technology Division, 4075 Park Avenue, Memphis, TN 38111-7492.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DCAA employees and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to audit work performed in terms of hours expended by individual employees, dollar amounts audited, exceptions reported, and net savings to the government as a result of those exceptions; records containing contractor information; records containing reimbursable billing information; name, Social Security Number, pay grade and (optionally) address information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To provide managers and supervisors with timely, on-line information regarding audit requirements, programs, and performance.

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' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in an on-line database and on magnetic tape at secure offsite storage.

RETRIEVABILITY:

Records are retrieved by organizational levels, name of employee, Social Security Number, office symbol, audit activity codes, or any other combination of these identifiers.

SAFEGUARDS:

Automated records are protected by restricted access procedures. Access to records is strictly limited to authorized officials with a bona fide need for the records.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Information Technology Division, Defense Contract Audit Agency, 4075 Park Avenue, Memphis, TN 38111-7492.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Information Technology Division, Defense Contract Audit Agency, 4075 Park Avenue, Memphis, TN 38111-7492.

Individuals must furnish name, Social Security Number, approximate date of record, and geographic area in which consideration was requested for record to be located and identified. Official mailing addresses are published as an appendix to the DCAA's compilation of systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Information Technology Division, Defense Contract Audit Agency, 4075 Park Avenue, Memphis, TN 38111-7492.

Individuals must furnish name, Social Security Number, approximate date of record, and geographic area in which consideration was requested for record to be located and identified.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual employees, supervisors, audit reports and working papers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

* * * * *

DEFENSE CONTRACT AUDIT AGENCY OFFICES

(Alphabetically by State and City)

California

DCAA Western Regional Office, Attention: RCI-4, 16700 Valley View Avenue, Suite 300, La Mirada, CA 90638-5833.

Georgia

DCAA Eastern Regional Office, Attention: RCI-1, 2400 Lake Park Drive, Suite 300, Smyrna, GA 30080-7644.

Massachusetts

DCAA Northeastern Regional Office, Attention: RCI-2, 59 Composite Way, Suite 300, Lowell, MA 01851-5150.

Pennsylvania

DCAA Mid-Atlantic Regional Office, Attention: RCI-6, 615 Chestnut Street, Suite 1000, Philadelphia, PA 19106-4498.

Texas

DCAA Central Regional Office, Attention: RCI-3, 6321 East Campus Circle Drive, Irving, TX 75063-2745.

Virginia

DCAA Headquarters, Attention: CMR, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060-6219.

[FR Doc. 00-19858 Filed 8-4-00; 8:45 am]

BILLING CODE 5001-10-F

DEPARTMENT OF EDUCATION**Submission for OMB Review; Comment Request**

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 6, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wai-Sinn Chan, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Wai-Sinn_L.Chan@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires

that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 1, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Section 704 Annual Performance Report (Parts I and II).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 336; Burden Hours: 11,760.

Abstract: This form accomplishes the Statutory mandate for data collection in Title VII of Rehabilitation Act of 1973, as amended (Act) and implementing regulations. These data collection requirements are found in sections 13, 706, 721, and 725 of the Act and 34 CFR part 366. In meeting these statutory and regulatory requirements the 704 Reports serve as: annual performance reports and are a basis for further funding grantees submitting the reports; a report of the training and technical assistance survey; the basis for mandatory on-site compliance reviews conducted by the Education Department on 15% of Centers for Independent Living (CILs) funded through the CIL program; an annual compliance self-evaluation with standards and indicators; and as a

source for an Annual Report to Congress.

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 4050, 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. 00-19876 Filed 8-4-00; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Record of Decision for the Savannah River Site Spent Nuclear Fuel Management Final Environmental Impact Statement, Aiken, SC

AGENCY: Department of Energy (DOE).

ACTION: Record of decision.

SUMMARY: The Savannah River Site Spent Nuclear Fuel Management Environmental Impact Statement (SRS SNF Management EIS, DOE/EIS-0279, March 2000) considered alternative ways of managing spent nuclear fuel (SNF) at DOE's Savannah River Site in Aiken, South Carolina. Based on that analysis, DOE has decided to implement the Preferred Alternative identified in the EIS. As part of the Preferred Alternative, DOE will develop and demonstrate the Melt and Dilute technology to manage about 97 percent by volume and 60 percent by mass of the aluminum-based SNF considered in the EIS (48 metric tons of heavy metal (MTHM) aluminum-based SNF).

Following development and demonstration of the technology (including characterization and qualification of the Melt and Dilute product to meet anticipated repository acceptance criteria), DOE will begin detailed design, construction, testing, and startup of a Treatment and Storage Facility (TSF). The SNF will remain in existing wet storage until treated and placed in dry storage in the TSF. The TSF will combine the transfer and treatment (Melt and Dilute) functions, to

be constructed in the existing 105-L building, with a new dry storage facility to be constructed in L Area near the 105-L building.

DOE also has decided to use Conventional Processing (*i.e.*, the existing canyons) to stabilize about 3 percent by volume and 40 percent by mass of the aluminum-based SNF. If the TSF becomes available before these materials have been stabilized, DOE may use the Melt and Dilute technology rather than Conventional Processing for their stabilization. DOE has also decided to continue to store small quantities of higher actinide materials until DOE determines their final disposition.

In addition, DOE will ship approximately 20 MTHM of non-aluminum-based SNF from the SRS to the Idaho National Engineering and Environmental Laboratory (INEEL). If DOE identifies any imminent health and safety concerns involving any aluminum-based SNF before the TSF becomes available, DOE will use Conventional Processing to stabilize the material of concern.

ADDRESSES: Copies of the SRS SNF Management EIS and this Record of Decision may be obtained by calling a toll free number (1-800-881-7292), sending an e-mail request to "nepa@srs.gov," or by mailing a request to: Andrew Grainger, National Environmental Policy Act (NEPA) Compliance Officer, Savannah River Operations Office, Department of Energy, Building 742A, Room 185, Aiken, South Carolina 29808. The final SRS SNF Management EIS (including the 33-page Summary) and this Record of Decision are available on the Office of Environmental Management's web site, <http://www.em.doe.gov>, and on DOE's NEPA web site, <http://tis.eh.doe.gov/nepa/>.

FOR FURTHER INFORMATION CONTACT: Questions concerning the SRS SNF management program can be submitted by calling 1-800-881-7292, mailing them to Mr. Andrew Grainger at the above address, or sending them electronically to the Savannah River Operations e-mail address, "nepa@srs.gov."

For general information on the DOE NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, 202-586-4600 or leave a message at 1-800-472-2756.

SUPPLEMENTARY INFORMATION:

Background

DOE previously completed the Interim Management of Nuclear Materials (IMNM) EIS (DOE/EIS-0220, October 1995), that included the management of 195 MTHM of aluminum-based SNF at the SRS. The primary purpose of the actions considered in the IMNM EIS was to correct or eliminate potential health and safety vulnerabilities related to some of the methods used to store nuclear materials (including SNF) at the SRS.

After completion of the IMNM EIS, DOE decided to stabilize about 175 MTHM of the 195 MTHM of aluminum-based SNF that was in storage at the SRS in 1995. DOE also decided the remaining 20 MTHM (out of 195 MTHM) of aluminum-based SNF at SRS was "stable" (*i.e.*, the SNF likely could be safely stored for about 10 more years, pending decisions on final disposition). That 20 MTHM of aluminum-based SNF is included in the SNF inventory considered in the SRS SNF Management EIS. In addition, the SRS SNF Management EIS considered approximately 20 MTHM of other SNF that is to be managed at the SRS as a result of prior NEPA analyses, as described below.

In 1995, DOE undertook a decision-making process to consolidate SNF across its nuclear facility complex. The Record of Decision (60 FR 28680, June 1, 1995; amended 61 FR 9441, March 8, 1996) for the Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs EIS (DOE/EIS-0203, April 1995) identified three facilities within the DOE complex where SNF should be managed. The facilities were chosen based on fuel types.

DOE decided that existing Hanford production reactor SNF would remain at Hanford, aluminum-based SNF would be consolidated at the SRS, and non-aluminum-based SNF would be consolidated at the INEEL. As a result, DOE will transfer about 20 MTHM of non-aluminum-based SNF from the SRS to INEEL and about 5 MTHM of aluminum-based SNF from INEEL to the SRS. Thus, the SRS SNF Management EIS evaluated the impacts of preparing 20 MTHM of non-aluminum-based SNF for shipment from the SRS to INEEL. The SRS SNF Management EIS also evaluated the management and treatment options for the 5 MTHM of aluminum-based SNF due to be received from INEEL.

In 1996, DOE issued a Record of Decision for the Final EIS on a Proposed

Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel (DOE/EIS-0218, February 1996). DOE decided (61 FR 25092, May 17, 1996) to accept approximately 18 MTHM of aluminum-based SNF (of United States origin) from foreign research reactors for management at the SRS, with additional SNF to be managed at INEEL. Shipments of foreign research reactor SNF to the SRS began in 1996 and are expected to continue until 2009. Consequently, the potential environmental impacts of managing and treating the 18 MTHM of aluminum-based foreign research reactor fuel were evaluated in the SRS SNF Management EIS.

The SRS SNF Management EIS also evaluated the treatment and storage of about 5 MTHM of aluminum-based domestic research reactor SNF. Shipments of spent domestic research reactor fuel to the SRS for management were assumed to continue until 2035. Finally, the SRS SNF Management EIS evaluated the storage and/or repackaging of higher actinide targets. These targets contain americium and curium isotopes that could be used in the production of elements with higher atomic numbers such as californium-252. Californium-252 is used as a neutron source for radiography and in the treatment of certain types of cancer, and for research in basic chemistry, nuclear physics, and solid-state chemistry. The mass of higher actinide targets stored at the SRS is less than 0.1 MTHM.

As detailed above, the total quantity of SNF to be managed by the SRS that is evaluated in the SRS SNF Management EIS is approximately 68 MTHM, composed of 48 MTHM aluminum-based SNF and 20 MTHM non-aluminum-based SNF.

The 48 MTHM of aluminum-based SNF to be managed and prepared for disposition are comprised as follows: 20 MTHM in existing wet storage; about 10 MTHM to be received from INEEL and domestic research reactors; and up to 18 MTHM to be received from foreign research reactors. The SRS must also manage about 20 MTHM of non-aluminum-based SNF until it is shipped to INEEL.

DOE expects to dispose of its aluminum-based SNF in a geologic repository after treatment or packaging. To achieve that goal, DOE is developing and preparing to implement a management strategy that includes preparing SRS aluminum-based SNF for disposal. DOE is committed to avoiding indefinite storage at the SRS of SNF in a form that is unsuitable for disposal.

Therefore, DOE has identified management technologies and facilities for storing and treating this SNF in preparation for disposal.

Materials Analyzed

In order to facilitate the identification of appropriate treatment technologies for the SNF, DOE grouped the SNF based on characteristics such as fuel size, physical and chemical properties, and radionuclide inventory. SNF was assigned to six SNF groups. For the reader's convenience, the six SNF groups will be referred to according to the letters A through F as listed below:

- Group A. Uranium and Thorium Metal Fuels
- Group B. Material Test Reactor-Like Fuels
- Group C. Highly Enriched Uranium (HEU)/Low Enriched Uranium (LEU) Oxides and Silicides
- Group D. Loose Uranium Oxide
- Group E. Higher Actinide Targets
- Group F. Non-Aluminum-Clad Fuels.

The six SNF groups are described in the SRS SNF Management EIS beginning on page 1-7.

Technologies Analyzed

DOE identified seven technologies that could be used to prepare SNF at SRS for disposition: (1) Prepare for Direct Disposal/Direct Co-Disposal; (2) Repackage and Prepare to Ship to Other DOE Sites; (3) Melt and Dilute; (4) Mechanical Dilution; (5) Vitrification Technologies; (6) Electrometallurgical Treatment; and (7) Conventional Processing Technology.

Technologies 1 and 2 are "New Packaging Technology options;" technologies 3 through 6 are "New Processing Technology options." Most of the New Packaging Technology options and the New Processing Technology options are technologies that DOE previously has not applied to the management of aluminum-based SNF for the purpose of ultimate disposition. DOE assigned the highest confidence of success and greatest technical suitability to options that have relatively simple approaches.

These seven technologies are described in the SRS SNF Management EIS beginning at page 2-8. The applicability of the New Packaging Technology options to the SNF groups is shown in Table 2-1 (page 2-10), and the applicability of the New Processing Technology options to the SNF groups is shown in Table 2-2 (page 2-14). The applicability of Conventional Processing technology to the SNF groups is described on page 2-17 of the SRS SNF Management EIS.

Alternatives Considered

Considering the technology options applicable to the SNF groups and decisions previously made about managing certain types of SNF, DOE developed five broad categories of alternatives that could be used to manage SRS SNF: No-Action, Minimum Impact, Direct Disposal, Maximum Impact, and the Preferred Alternative. These alternatives are summarized below and in Table 2-8 (page 2-36 of the SRS SNF Management EIS), and described in more detail in the SRS SNF Management EIS beginning on page 2-35. For wastes generated under all alternatives, DOE would use the existing SRS waste management facilities to treat, store, dispose, or recycle the waste in accordance with applicable requirements.

Preferred Alternative

DOE's Preferred Alternative is to use a combination of technologies (Melt and Dilute, Conventional Processing, and Repackage and Prepare to Ship to Other DOE Sites) to manage the SNF. The Preferred Alternative is within the mid-range on the scale of potential environmental impacts and provides for the long-term protection of the environment. DOE expects that the materials resulting from the Melt and Dilute process and Conventional Processing would be acceptable for disposal in a geologic repository. The Preferred Alternative would meet all legal requirements and policy commitments. In addition, the Preferred Alternative is consistent with DOE's long-range plans to dispose of SNF.

Under the Preferred Alternative, DOE would use each technology to treat specific groups of SNF as described below and in the SRS SNF Management EIS (on page 2-38, and in Figure 2-15, page 2-40). Melt and Dilute would be used to treat Group B, most of Group C, and most of Group D. Conventional processing would be used for Group A, part of Group C, and part of Group D. Continued wet storage would be used for Group E. Repackage and Prepare to Ship to Other DOE Sites would be used for Group F.

DOE will continue to store small quantities of higher actinide materials until DOE determines their final disposition, and will continue to wet-store the Non-Aluminum-Clad SNF at SRS until the material is shipped to the INEEL. DOE could transfer the Non-Aluminum-Clad SNF to dry storage after the material has been relocated from the Receiving Basin for Offsite Fuel to the L-Reactor Disassembly Basin in support of activities to phase-out operations in

the Receiving Basin for Offsite Fuel by fiscal year 2007.

No Action

Under the No Action Alternative, DOE would continue to store the SNF in the wet basins at the SRS indefinitely with the exception of Group F, for which the alternative, Repackage and Prepare to Ship to Other DOE Sites, would be used. While the No Action Alternative would result in few immediate environmental impacts, it provides for the least overall protection of the environment because it would not prepare the SNF for eventual disposal in a repository. Over the potential 40 years of continued wet storage under the No Action Alternative, some fuel could deteriorate.

Conventional Processing facilities, if they were operating for other reasons, could be used to stabilize any SNF that presented an environmental, safety, or health vulnerability. Conventional Processing facilities, however, are extremely unlikely to be operating over the entire potential 40 years of continued wet storage, and under the No Action Alternative there would be no means to stabilize SNF that presented a health or safety vulnerability once the Conventional Processing facilities were shut down. In addition, this alternative is inconsistent with DOE's commitment to avoid indefinite SNF storage at the SRS in a form that is unsuitable for final disposition.

Minimum Impact

The Minimum Impact Alternative combines the technologies (Prepare for Direct Disposal/Direct Co-Disposal, Melt and Dilute, Repackage and Prepare to Ship to Other DOE Sites) that DOE believes would result in the lowest overall potential environmental impact from SNF management. Prepare for Direct Disposal/Direct Co-Disposal would be used for Groups A, B, and C. Melt and Dilute would be used to treat Group D. Repackage and Prepare to Ship to Other DOE Sites would be used for Groups E and F.

The Minimum Impact Alternative was not selected because the use of Prepare for Direct Disposal/Direct Co-Disposal for HEU aluminum-clad fuel has a high degree of technical uncertainty concerning the acceptance of this type of fuel in a geologic repository without treatment. DOE has committed to store its SNF at the SRS in a "road-ready"/disposal form.

Even if most of the HEU aluminum-clad SNF could be directly disposed of, there is a small portion of that SNF that DOE believes could not be disposed of

without treatment. A Melt and Dilute facility thus would have to be developed in any event for that small portion of SNF. Finally, for any SNF that presented a potential health and safety vulnerability, mitigating actions (*i.e.*, packaging and dry storage) would be delayed for several years.

Maximum Impact

The Maximum Impact Alternative analyzed in the SRS SNF Management EIS represents the upper bound on the range of potential environmental impacts. For the analyses, two technologies (Conventional Processing and Repackage and Prepare to Ship to Other DOE Sites) are used for the management of the SNF. Repackage and Prepare to Ship to Other Sites would be used for SNF from Groups E and F. Conventional Processing would be used to treat all remaining SNF groups, including the Mark-18 targets from Group E.

This alternative would generate the greatest volume of liquid high-level waste that would have to be stored and eventually vitrified into glass canisters in the Defense Waste Processing Facility at the SRS. DOE has a high level of confidence that the vitrified (borosilicate glass) waste canisters would meet geologic repository acceptance criteria because borosilicate glass has been tested and analyzed extensively under potential repository conditions.

Conventional Processing operations would continue until the aluminum-based SNF inventory was eliminated and the SNF receipt rate was low (*i.e.*, about 150 Materials Test Reactor-like elements per year and 12 High Flux Isotope Reactor assemblies per year). This state would be expected to occur around 2009. In parallel with the Conventional Processing operations, DOE could construct a Transfer, Storage, and Treatment Facility with capability to manage newly received SNF after Conventional Processing operations ceased.

As stated in the SRS SNF Management EIS and based on the Record of Decision on a Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel (61 FR 25092, May 17, 1996), DOE prefers not to utilize Conventional Processing for reasons other than addressing safety and health concerns. In addition, H-Canyon capacity is already scheduled for several years to process materials other than those considered in the SRS SNF Management EIS, and therefore would not be available for several years to

process SNF that did not present a health or safety vulnerability.

Direct Disposal

The Direct Disposal Alternative would use a combination of technologies (Conventional Processing, Prepare for Direct Disposal/Direct Co-Disposal, Melt and Dilute, and Repackage and Prepare to Ship to Other DOE Sites) to manage the SNF. This alternative is within the mid-range on the scale of potential environmental impacts.

Conventional Processing would be used for all of Group A, the Sterling Forest Oxide from Group D, and the failed or sectioned SNF from Group C because these materials present potential health and safety concerns and would not likely be suitable for placement in a geologic repository. Prepare for Direct Disposal/Direct Co-Disposal would be used for Group B and all SNF (except the failed and sectioned SNF) in Group C. Melt and Dilute would be used for a majority of the SNF in Group D. Repackage and Prepare to Ship to Other DOE Sites would be used for Groups E and F.

The Direct Disposal Alternative was not selected because there is a high degree of technical uncertainty regarding the potential acceptability of HEU aluminum-clad SNF for disposal in a geologic repository, and because costs of developing and building a Melt and Dilute Facility would have to be incurred to treat only a small portion of the SNF.

Environmentally Preferable Alternative

The environmentally preferable alternative is the Minimum Impact Alternative because implementation of this alternative would result in the lowest overall environmental impacts. The Minimum Impact Alternative was not selected because the use of Prepare for Direct Disposal/Direct Co-Disposal for HEU aluminum-clad fuel has a high degree of technical uncertainty concerning the ability of this type of SNF to be accepted in a geologic repository without treatment. If treatment were required to prepare SNF for disposal, further environmental impacts would result. Further, use of Melt and Dilute for any SNF that could not be directly disposed of would be costly. Finally, deferred treatment of any SNF with potential health and safety vulnerabilities is not considered a prudent course of action.

Comments on Savannah River Site Spent Nuclear Fuel Management Final Environmental Impact Statement

Three public comments were received on the final EIS. One comment from Coalition 21, a not-for-profit corporation that promotes nuclear technology, opposed the use of the Melt and Dilute technology because potentially valuable HEU would be discarded, and because this technology would be more dangerous than Conventional Processing due to the higher temperature required for the Melt and Dilute technology. The amount of HEU that would be discarded would be insignificant compared to the amount of enriched uranium available to commercial nuclear power plants. Moreover, there is an excess supply of uranium for commercial use for the foreseeable future. Finally, all of the HEU from the research reactor SNF has been irradiated and, if this material were recovered and blended down for use in commercial nuclear power plants, the presence of uranium-236 in the enriched uranium would make it less attractive for use in nuclear fuels. DOE has experience in the melting of HEU and has a good safety record.

While DOE acknowledges that some uncertainty surrounds the new technology, the development of the Melt and Dilute technology and the design of the TSF would ensure that safety standards are met and environmental releases are minimized. Further, safety analyses would be performed to ensure that the process would be safe and the risks to the public and plant personnel would be low.

The second public comment, from the United States Environmental Protection Agency (EPA), Region 4, stated that EPA continued to have environmental concerns about cumulative impacts of the project. DOE discussed this comment with EPA staff because no specific concerns were cited. EPA staff told DOE that this comment reflected the uncertainty regarding what alternative DOE ultimately would decide to implement. DOE has provided a thorough analysis of the cumulative impacts of SNF management at the SRS in Chapter 5 of the SRS SNF Management EIS, and believes that, by selecting the Preferred Alternative, it has addressed EPA's concerns.

The third public comment, from the Centers for Disease Control and Prevention, Public Health Service, Department of Health and Human Services, stated that the Department of Health and Human Services' concerns have been addressed in the final EIS, and that the Department had no additional comments.

Decision

DOE has decided to implement the Preferred Alternative identified in the SRS SNF Management EIS, which provides for long-term protection of the environment and minimizes potential short-term environmental impacts and health risks. Specifically:

1. DOE has decided to implement the Melt and Dilute technology for managing about 97 percent by volume and 60 percent by mass of the 48 MTHM of aluminum-based SNF considered in the SRS SNF Management EIS. Implementation of the Melt and Dilute technology will be achieved through development and demonstration of the technology using full-size irradiated fuel elements, characterization and qualification of the Melt and Dilute SNF product to meet anticipated geologic repository acceptance criteria, completion of full-scale facility design, and construction, testing, and startup of the TSF. These implementation steps will build on the development work done to date and will proceed in a disciplined manner to ensure that operation of the TSF is achieved. The fuel will remain in wet storage basins at the SRS until treated and placed in dry storage in the TSF. The specific steps in the DOE implementation program include continuation of the development program leading to a demonstration of the Melt and Dilute technology in FY 2002 using full-size irradiated research reactor SNF assemblies. Information from this program will support the detailed design effort and reduce engineering and operational uncertainties. Based upon preliminary review and feedback from the Nuclear Regulatory Commission and the DOE Office of Civilian Radioactive Waste Management, DOE believes that the work to characterize and qualify the product from the Melt and Dilute technology can be completed. DOE will pursue a disciplined implementation approach that builds on the success of the development, demonstration, and qualification efforts, and incorporates recent project management improvements instituted by DOE.

DOE plans to complete the conceptual design for the TSF in FY 2002, to be followed in FY 2003 by preparation of preliminary design, which will incorporate information gained from the Melt and Dilute technology demonstration. Preliminary design will be followed by final design in FY 2004 and FY 2005. When the preliminary design is completed, the construction cost estimate and schedule will be reviewed and validated to establish the

project baselines for completing the TSF.

With this implementation strategy, DOE expects to have the TSF ready for Melt and Dilute and dry storage operations in FY 2008. DOE will ensure continued availability of the SRS Conventional Processing facilities until DOE has demonstrated implementation of the Melt and Dilute technology.

To implement the Melt and Dilute technology, DOE will construct a Melt and Dilute facility in the existing 105-L building at the SRS and build a dry storage facility in L Area, near the 105-L building. As a back-up to Melt and Dilute, DOE will continue to evaluate the Prepare for Direct Disposal/Direct Co-Disposal option of the New Packaging Technology and would pursue implementation of this option if Melt and Dilute were not feasible. DOE has decided that Group B SNF, most Group C SNF, and most Group D SNF would be stored and then treated using the TSF when it becomes available.

If DOE identifies any imminent health and safety concerns involving any aluminum-based SNF before TSF becomes operational, DOE has decided to use Conventional Processing to stabilize the material of concern. This decision is consistent with the Record of Decision on a Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel, under which DOE decided to pursue one or more new technologies that would put the foreign research reactor SNF in a form or container that is eligible for direct disposal in a geologic repository. In addition, the Melt and Dilute technology is fully compatible and supportive of the nonproliferation objectives of the United States.

2. DOE has decided to use Conventional Processing to stabilize a small portion of materials before a new treatment facility is in place. The rationale for this processing is to avoid the possibility of urgent future actions, including expensive recovery actions that would entail unnecessary radiation exposure to workers, and, in one case, to manage a unique waste form (*i.e.*, core filter block).

This material includes the Experimental Breeder Reactor—II SNF, the Sodium Reactor Experiment SNF, the Mark-42 targets, and the core filter block from Group A; the failed or sectioned Tower Shielding Reactor, High Flux Isotope Reactor, Oak Ridge Reactor, and Heavy Water Components Test Reactor SNF and a Mark-14 target from Group C; and the Sterling Forest Oxide (and any other powdered/oxide fuel that may be received at SRS while

H-Canyon is still in operation) from Group D.

Although it is possible that Melt and Dilute technology could be applied to most of these materials, DOE considers timely alleviation of potential health and safety vulnerabilities to be the most prudent course of action because it would stabilize materials whose forms or types pose a heightened probability of releasing fission products in wet storage. Nonetheless, if these materials have not been stabilized before the TSF becomes available, the TSF may be used rather than Conventional Processing. Some of this fuel will be processed in H-Canyon where the highly enriched uranium would be blended down to low enriched uranium and stored pending potential sale as feed stock for commercial nuclear fuel.

3. DOE has decided to continue to wet-store the Mark-18, Mark-51 and the other higher actinide targets until DOE determines their final disposition. In addition, 20 MTHM of non-aluminum-based SNF will be shipped to INEEL.

In reaching these decisions, DOE considered a number of factors, including the paramount goal that the processes and facilities used to prepare aluminum-based SNF for disposal in a geologic repository be cost-effective and present only low risks to workers and the public.

Other factors considered in this decision include the environmental analyses reported in the SRS SNF Management EIS; estimated costs of the alternatives evaluated in the Report on the Savannah River Site Aluminum-based Spent Nuclear Fuel Alternatives Cost Study; nonproliferation impacts as reported in the DOE Office of Arms Control and Nonproliferation report, "Nonproliferation Impacts Assessment for the Management of the Savannah River Site Aluminum-Based Spent Nuclear Fuel;" the National Academy of Sciences report, "Research Reactor Aluminum Spent Fuel—Treatment Options for Disposal;" regulatory implications of the alternatives; DOE missions; and public comments on both the SRS SNF Management Draft and Final EIS, including those of the Defense Nuclear Facilities Safety Board.

DOE evaluated factors such as technical availability, nonproliferation and safeguards, cost, labor availability and core competency, and custodial care. There were no issues associated with these factors that indicated a clear advantage or disadvantage for a particular SNF management alternative.

Mitigation

DOE is committed to operating the SRS in compliance with all applicable

laws, regulations, DOE orders, permits and compliance agreements. Section 4.3 of the SRS SNF Management EIS presents an overview of the mitigation measures that will be taken to minimize the risks associated with the construction and operation of the TSF (e.g., strong "stop work" stipulations in the event that cultural resources or human remains are discovered, and runoff control). DOE considers these to be routine mitigation measures that do not require a mitigation action plan (see 10 CFR 1021.331(a)).

Issued at Washington, DC, July 24, 2000.

Carolyn L. Huntoon,

Assistant Secretary for Environmental Management.

[FR Doc. 00-19926 Filed 8-4-00; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex Plant

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, August 22, 2000, 1 p.m.—5 p.m.

ADDRESSES: Amarillo College, Business Center—Exhibit Hall, Polk Street Campus, Polk St. & 15th Avenue, Amarillo, Texas 79101.

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120; Phone (806) 477-3125; Fax (806) 477-5896 or e-mail: jjohnson@pantex.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- 1:00 Agenda Review/Approval of Minutes
- 1:15 Co-Chair Comments
- 1:30 Task Force/Subcommittee Reports
- 2:00 Ex-Officio Reports

2:30 Updates—Occurrence Reports—DOE

3:00 Break

3:15 Presentation (to be decided)

4:15 Public Comments

4:30 Closing Comments

5:00 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 Jerry Johnson's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and every reasonable provision will be made to accommodate the request in the agenda.

The 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.

Minutes

Minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX; phone (806) 371-5400. Hours of operation are from 7:45 a.m. to 10 p.m. Monday through Thursday; 7:45 a.m. to 5 p.m. on Friday; 8:30 a.m. to 12 noon on Saturday; and 2 p.m. to 6 p.m. on Sunday, except for Federal holidays.

Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX; phone (806) 537-3742. Hours of operation are from 9 a.m. to 7 p.m. on Monday; 9 a.m. to 5 p.m. Tuesday through Friday; and closed Saturday and Sunday as well as Federal holidays.

Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on August 2, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00-19927 Filed 8-4-00; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF ENERGY**Environmental Management Site-Specific Advisory Board, Paducah Gaseous Diffusion Plant****AGENCY:** Department of Energy.**ACTION:** Notice of open meeting

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Paducah, Kentucky. The Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, August 24, 2000, 5:30 p.m.–9 p.m.**ADDRESSES:** Paducah Information Age Park Resource Center, 2000 McCracken Boulevard, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: John D. Sheppard, Deputy Designated Federal Officer, Department of Energy, Paducah Site Office, Post Office Box 1410, MS-103, Paducah, Kentucky 42001, (270) 441-6804; fax (270) 441-6801 or e-mail: sheppardjd@ornl.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Copies of the final agenda will be available at the meeting.

5:30 p.m.—Informal Discussion

6 p.m.—Call to Order

6:10 p.m.—Approve Minutes

6:20 p.m.—Presentations with Board response and public comment

8 p.m.—Sub Committee Reports with Board response and public comment

8:30 p.m.—Administrative Issues

9 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 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 August 2, 2000.

Rachel M. Samuel,*Deputy Advisory Committee Management Officer.*

[FR Doc. 00-19928 Filed 8-4-00; 8:45 am]

BILLING CODE 6450-01-P**DEPARTMENT OF ENERGY****Environmental Management Site-Specific Advisory Board, Los Alamos****AGENCY:** Department of Energy.**ACTION:** Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos. The Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, August 23, 2000, 6 p.m.–9 p.m.**ADDRESSES:** Jemez Pueblo Walatowa Visitors Center, 7413 New Mexico State highway 4, Jemez Pueblo, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ann DuBois, Northern New Mexico Citizens' Advisory Board, 1640 Old Pecos Trail, Suite H, Santa Fe, NM 87505. Phone (505) 989-1662; fax (505) 989-1752 or e-mail: adubois@doeal.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Opening activities 6–6:30 p.m.

2. Public Comment 6:30–7 p.m.

3. Reports:

Effects of the Cerro Grande Fire on the ER Program

Air Quality Audit by Dr. John Till

4. Committee Reports:

Waste Management

Environmental Restoration
Monitoring and Surveillance
Community Outreach
Budget

5. Other Board business will be conducted as necessary.

This agenda is subject to change at least one day in advance of the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ann DuBois at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal 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 beginning of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1640 Old Pecos Trail, Suite H, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m. and 4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: <http://www.nnmcab.org>.

Issued at Washington, DC on August 2, 2000.

Rachel M. Samuel,*Deputy Advisory Committee Management Officer.*

[FR Doc. 00-19929 Filed 8-4-00; 8:45 am]

BILLING CODE 6405-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP96-383-008]

Dominion Transmission, Inc. (Formerly CNG Transmission Corporation); Notice of Negotiated Rate Filing

August 1, 2000.

Take notice that on July 28, 2000, Dominion Transmission, Inc. (DTI) (formerly CNG Transmission Corporation) tendered for filing the following tariff sheet for disclosure of a recently negotiated rate transaction:

Original Sheet No. 399C

DTI requests an effective date of August 1, 2000, for the negotiated rate.

DTI states that copies of the filing have been served on all parties on the official service list, DTI's customers, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 00-19869 Filed 8-4-00; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP99-195-003]

Equitrans, L.P.; Notice of Compliance Filing

August 1, 2000.

Take notice that on July 27, 2000, Equitrans, L.P. (Equitrans), tendered for filing proposed tariff sheets designed to

reflect the sale by Equitrans to Dominion Transmission Company (Dominion) of its gas processing plants at Copley Run, Lewis County, West Virginia and at West Union, Doddridge County, West Virginia.

Equitrans states that the shippers will be able to contract directly with Dominion or any other gas processing service provider for gas processing service. Equitrans further states that it will agree to collect a default charge of \$0.10 per Dth for gas processing services for any shipper transporting gas on the Equitrans' system and processed by Dominion but who has not contracted directly with Dominion. This conduit arrangement is to be in effect for a limited term of up to one year under the tariff sheets tendered herein.

Finally, Equitrans is hereby seeking to collect, without interest, through a surcharge mechanism underrecoveries of \$148,164 for gas processing that took place in January through October of 1999 as contemplated under the existing annual adjustment procedures of its tariff and in accordance with the notification of the underrecoveries previously provided by Equitrans in filings made in this proceeding, with a proposed effective date of September 1, 2000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 8, 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 00-19870 Filed 8-4-00; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP00-129-000]

Horizon Pipeline Company; Notice of Site Visit

August 1, 2000.

On August 14, 2000, the staff of the Office of Energy Projects (OEP) will conduct a pre-certification visit of the pipeline route proposed by Horizon Pipeline Company (Horizon) for the Horizon Pipeline Project. Inspection of the proposed route, which crosses portions of Illinois, will be conducted by automobile from a location to be determined. The inspection will continue along the route southward from McHenry County to DuPage County, Illinois. Representatives of Horizon will accompany the OEP staff.

All interested parties may attend the site visit. Those planning to attend must provide their own transportation. For further information on attending the site visit, please contact Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208-1088.

David P. Boergers,
Secretary.

[FR Doc. 00-19868 Filed 8-4-00; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP00-2-003]

Overthrust Pipeline Company; Notice of Tariff Filing

August 1, 2000.

Take notice that on July 28, 2000, Overthrust Pipeline Company (Overthrust) tendered by filing as part of its FERC Gas Tariff, the following tariff sheets, with an effective date of April 1, 2000.

First Revised Volume No. 1-A

Substitute Third Revised Sheet No. 4
Second Substitute Sixth Revised Sheet No. 70

Original Volume No. 1

Substitute Eighteenth Revised Sheet No. 6

Overthrust states that the filing is being made in compliance with Commission's letter order issued July 13, 2000, in Docket No. RP00-2-000.

Overthrust states that on March 24, 2000, it filed an Offer of Settlement (Settlement Agreement) in Docket No.

RP00-2-000, to resolve all outstanding issues in the rate case. By letter order issued July 13, 2000, the Commission approved the settlement as a fair and reasonable resolution of the issues in this proceeding.

Further, Overthrust states that one of the major elements of the Settlement Agreement was a continuation of the firm transportation reservation charge and interruptible rate established by settlement in Overthrust's prior rate case proceeding in Docket No. RP97-301. Therefore, no refunds are required.

Overthrust states that a copy of this filing has been served upon Overthrust's customers and the Wyoming Public Service Commission.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 00-19871 Filed 8-4-00; 8:45am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00-115-000, et al.]

FortisUS Energy Corporation, et al.; Electric Rate and Corporate Regulation Filings

August 1, 2000.

Take notice that the following filings have been made with the Commission:

1. FortisUS Energy Corporation

[Docket No. EC00-115-000]

Take notice that on July 28, 2000, FortisUS Energy Corporation tendered for filing, pursuant to 18 CFR 33.3(h), a copy of a contract related to its Application for Order Authorizing Disposition of Jurisdictional Facilities which was submitted on July 20, 2000. Confidential treatment of the contract,

pursuant to 18 CFR 388.112, is requested.

Comment date: August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Trigen-Baca Operating Corporation

[Docket No. EG00-229-000]

Take notice that on July 25, 2000, Trigen-Baca Operating Corporation, 25 Tenth Street, Golden, Colorado 80401-0088 (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The Applicant is a Delaware corporation. The Applicant proposes to operate two new electric generation plants, each consisting of a single approximately 5-megawatt gas turbine, in the process of construction in unincorporated Baca County, Colorado (the Facilities). The Facilities are scheduled to begin commercial operation July 1, 2000. All of the electric output of the Facilities will be sold at wholesale, initially to Tri-State Generation and Transmission Association, Inc.

Comment date: August 22, 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. Lockport Power Generation, LLC

[Docket No. EG00-231-000]

Take notice that on July 26, 2000, Lockport Power Generation, LLC (the Applicant) whose address is 600 Campus Park Drive, Florham Park, New Jersey 07931, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant states that it will be engaged directly and exclusively in the business of owning and/or operating an approximately 200 MW natural gas fired electric generating facility located near Lockport, Illinois and selling electric energy at wholesale. The Applicant requests a determination that the Applicant is an exempt wholesale generator under Section 32(a)(1) of the Public Utility Holding Company Act of 1935.

Comment date: August 22, 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. NEO Chester-Gen LLC

[Docket No. EG00-233-000]

Take notice that on July 27, 2000, NEO Chester-Gen LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that will be engaged directly and exclusively in owning and operating a 3.3 MW cogeneration facility, located in Chester, Pennsylvania and selling electric energy at wholesale.

Comment date: August 21, 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.

5. NRG Energy Center Dover LLC

[Docket No. EG00-234-000]

Take notice that on July 27, 2000, NRG Energy Center Dover LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that will be engaged directly and exclusively in owning, operating, and expanding a 18 MW cogeneration facility, located in Dover, Delaware, and selling electric energy at wholesale.

Comment date: August 22, 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.

6. Dynegy Midwest Generation, Inc.

[Docket No. EG00-235-000]

Take notice that on July 27, 2000, Dynegy Midwest Generation, Inc., 1000 Louisiana, Suite 5800, Houston, Texas filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Dynegy Midwest Generation, Inc. is a Delaware corporation, and is engaged directly and exclusively in owning and/or operating certain electric generating facilities in Illinois, and selling electric energy at wholesale.

Comment date: August 22, 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.

7. NEO Toledo-Gen LLC

[Docket No. EG00-236-000]

Take notice that on July 27, 2000, NEO Toledo-Gen LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that will be engaged directly and exclusively in owning and operating a 750 kW cogeneration facility, located in Toledo, Ohio, and selling electric energy at wholesale.

Comment date: August 22, 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.

8. NEO Freehold-Gen LLC

[Docket No. EG00-237-000]

Take notice that on July 27, 2000, NEO Freehold-Gen LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that will be engaged directly and exclusively in owning and operating a 2.1 MW cogeneration facility, located in Freehold, New Jersey, and selling electric energy at wholesale.

Comment date: May 5, 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.

9. Commonwealth Edison Company, Commonwealth Edison Company of Indiana

[Docket No. ER00-1820-002]

Take notice that on July 27, 2000, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collectively ComEd), tendered for filing tariff sheet changes in compliance with the Commission's order of July 12, 2000 in this proceeding.

Comment date: August 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. PJM Interconnection, L.L.C.

[Docket Nos. ER00-2445-001 and EL00-74-001]

Take notice that on July 24, 2000, PJM Interconnection, L.L.C. (PJM), in compliance with the Commission's July 7, 2000 order in these dockets, 92 FERC ¶ 61,013 (July 7 Order), submitted the following revised sheets to the Appendix to Attachment K of PJM's Open Access Transmission Tariff (Tariff) on file with the Commission:

Substitute Second Revised Sheet No. 174
Substitute Original Sheet No. 174a

and identical changes to the following pages of Schedule 1 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (OA):

Substitute First Revised Sheet No. 99
Substitute First Revised Sheet No. 99A

PJM states that the revised sheets implement the requirements of the July 7, 2000 Order that: (1) PJM provide advance notice of its intention to schedule generators in anticipation of an emergency; and (2) PJM permit a generator that specifies a minimum run time to elect to submit a cost-based bid following a posted emergency and return to market-based bidding the following operating day.

In compliance with the July 7, 2000 Order, PJM requests an effective date of July 7, 2000 for these revised Tariff and OA sheets.

Comment date: August 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. ISO New England Inc.

[Docket No. ER00-3233-000]

Take notice that on July 21, 2000, ISO New England Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) for informational purposes only its amended By-Laws.

Comment date: August 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Deseret Generation and Transmission Co-operative, Inc.

[Docket No. ER00-3277-000]

Take notice that on July 27, 2000, Deseret Generation & Transmission Co-operative, Inc. (Deseret), tendered for filing an executed Confirmation Agreement for a firm power sale between Deseret and Idaho Power Company d/b/a Idacorp Energy (Idacorp). This Confirmation Agreement is filed pursuant to the Western Systems Power Pool Agreement regarding a long-term power purchase and sale transaction.

Deseret requests an effective date of July 1, 2000.

Comment date: August 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. California Independent System Operator Corporation

[Docket No. ER00-3278-000]

Take notice that the California Independent System Operator (ISO), on July 27, 2000, tendered for filing a proposed Restated Interim Agreement between the ISO, Pacific Gas and Electric (PG&E), and the Sacramento Municipal Utility District (SMUD), FERC Electric Service Tariff No. 39. The ISO states that the Restated Interim Agreement serves the purposes of giving SMUD the opportunity to schedule and settle with the ISO through its chosen Scheduling Coordinator; having SMUD self-provide Regulation for the SMUD system, including providing direct Automatic Generation Control to the ISO's Energy Management System; providing SMUD the opportunity to participate in the ISO's markets in accordance with the ISO's proposed terms applicable to Metered Subsystems in exchange for SMUD's relinquishing its right to make schedule changes after the close of the ISO's Hour-Ahead Market; having SMUD provide real-time operating information to the ISO's Energy Management System by direct telemetry as soon as possible; and adding the option for the ISO or SMUD to terminate the Restated Interim Agreement on or after March 31, 2003.

The ISO states that this filing has been served on PG&E, SMUD, the California Electricity Oversight Board, and the California Public Utilities Commission.

Comment date: August 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. California Independent System Operator Corporation

[Docket No. ER00-3279-000]

Take notice that July 27, 2000, the California Independent System Operator Corporation (ISO), on tendered for filing a Uniform Distribution Company Operating Agreement (UDC Operating Agreement or Agreement) between Lassen Municipal Utility District (Lassen MUD) and the ISO for acceptance by the Commission.

The UDC Operating Agreement establishes ISO specifications and procedures that govern the general operation of the facilities that form the interface between the UDC system and the ISO Grid. The Agreement also establishes maintenance coordination standards, load shedding, emergency

electrical planning, and information sharing and gathering procedures between the ISO and the UDC.

The ISO is requesting waiver of the 60-day notice requirement to allow the UDC Operating Agreement to be made effective as of July 1, 2000, the effective date of the agreement.

Copies of the filing were served upon Lassen MUD and the California Public Utilities Commission.

Comment date: August 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Tucson Electric Power Company

[Docket No. ER00-3280-000]

Take notice that on July 27, 2000, Tucson Electric Power Company (TEP), tendered for filing a short-term umbrella service agreement for sales under TEP's Market-Based Power Sales Tariff, FERC Electric Tariff Original Volume No. 3.

Umbrella Service Agreement for Short-Term Transactions with the California Independent System Operator Corporation ("California ISO") dated July 24, 2000. Service commenced under this service agreement on June 27, 2000.

Comment date: August 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Rockingham Power, L.L.C.

[Docket No. ER00-3281-000]

Take notice that on July 27, 2000, Rockingham Power, L.L.C., tendered for filing a long-term service agreement (Power Purchase and Sales Agreement) covering transactions between Rockingham Power, L.L.C. (Rockingham) and Dynegy Power Marketing, Inc., under Rockingham's market-based rate schedule (Rate Schedule FERC No. 1), to be in effect as of June 30, 2000.

Comment date: August 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC

Docket No. ER00-3282-000

Take notice that on July 27, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Service Agreement No. 82 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 July 3, 2000 to H.Q. Energy Services (U.S.) Inc.

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: August 17, 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. 00-19900 Filed 8-4-00; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Acceptance for Filing and Soliciting Motions To Intervene and Protests

July 14, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* A New Major License.

b. *Project No.:* 2042-013.

c. *Date filed:* January 21, 2000.

d. *Applicant:* Public Utility District No. 1 of Pend Oreille County.

e. *Name of Project:* Box Canyon Hydroelectric Project.

f. *Location:* On the Pend Oreille River, in Pend Oreille County, Washington and Bonner County, Idaho. About 709 acres within the project boundary are located

on lands of the United States, including Kalispel Indian Reservation (493 acres), U.S. Forest Service Colville National Forest (182.93 acres), U.S. Department of Energy, Bonneville Power Administration (24.14 acres), U.S. Fish and Wildlife Service (2.45 acres), U.S. Army Corps of Engineers (5.29 acres), and U.S. Bureau of Land Management (1.44 acres).

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(1)-825(r).

h. *Applicant Contact:* Mr. Robert Gedds, Public Utility District No. 1 of Pend Oreille County, 130 North Washington St., Newport, WA 99156; (509) 447-3137.

i. *FERC Contact:* Mr. Timothy Welch, E-mail: Timothy.Welch@FERC.FED.US or telephone 202-219-2666.

j. *Deadline for filing motions to intervene and protest:* October 6, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The Box Canyon Project is located in the northeast corner of Washington state in Pend Oreille County. The project dam is located at river mile 34.4 from the Pend Oreille River's confluence with the Columbia River. The site is 13 miles from the Canadian border, 14 miles from the Idaho border, and 90 miles north of city of Spokane, WA. The existing Box Canyon Project consists of: (1) 46-foot-high, 160-foot-long reinforced concrete dam with integral spillway, (2) 217-foot-long, 35-foot-diameter diversion tunnel, (3) 1,170-foot-long forebay channel, (4) auxiliary spillway, (5) powerhouse containing four generating units with a combined capacity of 72 MW, (6) 8,850-acre reservoir at maximum operating pool elevation of 2030.6 feet, and other associated facilities. PUD No. 1 operates the project in a run-of-river mode.

PUD No. 1 purposes to upgrade all four turbines with new high efficiency, fish-friendly runners and to rewind the four generators to increase generating

capacity to 90 MW. No new structures will be built and no construction in the river will be required. No operational changes will be needed although peak flow through each turbine will be increased from 6,850 cfs to 8,100 cfs which will ultimately result in an 8% increase in average annual energy output.

m. *Location of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20246, or by calling (202) 208-1371. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

n. *Procedural schedule and final amendments:* The application will be processed according to the following milestones, some of which may be combined to expedite processing:

- Notice of NEPA scoping
- Notice that the application is ready for environmental analysis
- Notice of the availability of the draft NEPA document
- Notice of the availability of the final NEPA document
- Order issuing the Commission's decision on the application

Final amendments to the application must be filed with the Commission within 30 days of the Notice that the application is ready for environmental analysis.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filing must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Environmental and Engineering Review, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

David P. Boergers,
Secretary.

[FR Doc. 00-20074 Filed 8-4-00; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

July 14, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2482-023.

c. *Date filed:* December 19, 1991.

d. *Applicant:* Erie Boulevard Hydropower, L.P.

e. *Name of Project:* Hudson River Hydroelectric Project.

f. *Location:* On the Hudson River, at river miles 209 and 212, in the towns of Moreau, Corinth, (Saratoga County), Lake Luzerne, and Queensbury (Warren County), New York. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)-825(r).

h. *Applicant Contact:* Mr. Jerry L. Sabattis, Hydro Licensing Coordinator, 225 Greenfield Parkway, Suite 201,

Liverpool, New York 13088, (315) 413-2787.

i. *FERC Contact:* Lee Emery, E-mail address, Lee.Emery@ferc.fed.us, or telephone (202) 219-2779.

j. *Deadline for comments, recommendations, terms and conditions, and prescriptions:* October 6, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenor filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application has been accepted for filing and is ready for environmental analysis at this time.

l. *Description of the Project:* The Hudson River Project consists of two hydropower developments on the Hudson River: the Spier Falls development at river mile (RM) 212 and the Sherman Island development at RM 209. The Spier Falls development consists of: (1) a 1,721-foot-long dam consisting of (a) three non-overflow concrete gravity dams (52 feet, 553 feet, and 306 feet in length) with a maximum height of 145 feet; and (b) an 810-foot-long spillway up to 70 feet in height; (2) a reservoir with a surface area of 638 acres at a normal maximum water surface elevation of 436.8 feet National Geodetic Vertical Datum (NGVD), with usable storage of 2,526 acre-feet (ac-ft), and a gross storage capacity of 28,926 ac-ft; (3) a forbay canal; (4) two intake structures; one with 2¹/₄-inch clear spaced trashracks and another with 5-inch clear spaced trashracks located in front of the gates; and a trashrake; (5) two penstocks and eight penstock openings (four of which are sealed); and (6) a powerhouse containing two vertical Francis turbines (installed capacities: 7.3 megawatts (MW) and 43.2MW); and (7) appurtenant equipment and controls. There is no bypassed reach. The development has an installed capacity of 50.6 MW and an annual average energy production of 214,372 megawatt-hours.

The development is operated in a peaking mode in tandem with the Sherman Island development. Reservoir

water levels fluctuate daily up to four feet with an occasional drawdown of eight feet for maintenance. Water from the powerhouse is discharged directly to the upper reach of the Sherman Island reservoir.

The Sherman Island development consists of: (1) A 949-foot-long buttressed and gravity dam with a spillway topped with 3.7-foot and 5.7-foot high wooden flashboards with a maximum height of 38 feet and a 584-foot-long non-overflow section with a maximum height of 67 feet; (2) a reservoir with a surface area of 305 acres with a gross storage capacity of 6,960 ac-ft, and a usable storage capacity of 1,060 ac-ft at a normal maximum water surface elevation of 353.3 feet NGVD; (3) a concrete wingwall; (4) a forebay; (5) an intake structure consisting of a power canal with 15 penstocks (three of which are sealed) and 3 1/4-inch clear spaced steel bar trashracks; (6) one powerhouse with four vertical Francis turbines with installed capacities of 7.2 megawatts (MW) each; and (7) a tailrace consisting of a concrete apron to prevent undermining of the powerhouse. The total installed capacity of the development is 28.8 MW and an annual average energy production of 144,452 megawatt-hours. There is a 4,000 foot-long bypassed reach between the dam and the powerhouse.

The Sherman Island development is operated in a peaking mode in tandem with the Spiers Falls development. Maximum normal vertical water surface fluctuation is 3.7 feet with an occasional fluctuation of 7.4 feet for maintenance. Water from the powerhouse is discharged to the upper reach of the Feeder Dam Project (FERC 2554) reservoir.

m. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208-1371. The application may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all

comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Environmental Engineering Review, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 00-20075 Filed 8-4-00; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, Comments, Recommendations, and Terms and Conditions

July 14, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 11845-000.

c. *Date filed:* July 5, 2000.

d. *Applicant:* The Harrisburg Authority.

e. *Name of Project:* Harrisburg Water Supply Project.

f. *Location:* In Dauphin County, Pennsylvania. The project utilizes water from the Dehart Reservoir and does not occupy federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act 16 USC §§ 791(a)-825(r).

h. *Applicant Contact:* Trent A. Hargrove, Chairman, The Harrisburg Authority, One Keystone Plaza, Suite 104, Front and Market Streets, Harrisburg, PA 17101, (717) 232-3777.

i. *FERC Contact:* Robert W. Bell (202) 219-2806.

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D-4.

k. *Deadline for filing motions to intervene, protests and comments:* August 21, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Project:* The project consists of a proposed powerhouse on the 20-mile long, 42-inch diameter reinforce concrete pipe running between the DeHart Reservoir and the Harrisburg water treatment plant with one new generating unit having an installed capacity of 190-kW. The average annual generation would be 1,466,000 kWh.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208-1371. This filing may be viewed on <http://www.ferc.fed.us/online/rims.htm> (call (202) 208-2222 for assistance). A copy is also available for inspection and reproduction at the address shown in item h above.

All documents (original and eight copies should be filed with: David P. Boergers, secretary, Federal Energy Regulatory Commission, Mail Code: DHAC, PJ-12, 888 First Street NE., Washington DC 20426.

Please include the Project Number 11845-000 on any comments, protests, or motions filed.

Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting

comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS," (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in

accordance with 18 CFR 4.34(b) and 385.2010.

David P. Boergers,
Secretary.

[FR Doc. 00-20076 Filed 8-4-00; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL99-3-002]

Certification of New Interstate Natural Gas Pipeline Facilities; Order Further Clarifying Statement of Policy

Issued July 28, 2000.

Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hebert, Jr.

On September 15, 1999, the Commission issued a Statement of Policy (Policy Statement) regarding its policy for certificating new pipeline construction.¹ On February 9, 2000, in Docket No. PL99-3-001, the Commission issued an order clarifying the Statement of Policy.² Six parties filed requests for rehearing, reconsideration, or clarification of the February 9 order.³ This order addresses those requests.

I. Background

In the Policy Statement, the Commission explained the analytical steps it will use to evaluate proposals for certificating new construction. In this analysis, the threshold question applicable to an existing pipeline's proposal is whether the project can proceed without subsidies from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on its existing customers, existing pipelines in the market and their captive customers, or the economic interests of landowners and communities affected by the route of the new pipeline. Where residual adverse

¹ Certification of New Interstate Natural Gas Pipeline Facilities, Statement of Policy, 88 FERC ¶61,227 (1999).

² Order Clarifying Statement of Policy, 90 FERC ¶61,128 (2000).

³ American Public Gas Association (APGA); FPL Energy, Inc. (FPL Energy); KeySpan Gas East Corp. and The Brooklyn Union Gas Co., (Keyspan); Pennsylvania Office of Consumer Advocate (Pennsylvania OCA); Process Gas Consumers Group, American Iron and Steel Institute, Georgia Industrial Group, American Forest and Paper Association, Alcoa, Inc., and United States Gypsum Co. (Process Gas); and Texas Eastern Transmission Corp. and Algonquin Gas Transmission Co. (Texas Eastern).

effects on the three interests remain after the pipeline makes an effort to minimize them, the Commission will evaluate the project by balancing the evidence of the project's public benefits against its residual adverse effects. The Policy Statement set forth in detail the considerations the Commission will apply to each of these steps. After analyzing the application based on these considerations, the Commission will approve an application for a certificate only if the public benefits outweigh any adverse effect.⁴

The Commission also stated that customers with a right of first refusal (ROFR) on pipelines with incrementally priced vintages of capacity can exercise their ROFR at their original contract rate except when the pipeline is fully subscribed and there is a competing bid for the capacity which is higher than the existing customer's maximum rate. In that case, the existing customer could be required to match the highest competing bid up to a maximum rate which could be either an incremental rate or a rolled-up rate in which costs for expansions are accumulated to yield an average expansion rate.

In the February 9 order clarifying the Policy Statement, the Commission explained that, to adjust the maximum rate applicable to shippers exercising their ROFR, the pipeline must establish a mechanism for reallocating costs between the historic and incremental rates so that all rates remain within the pipeline's cost-of-service. This mechanism can be established either through a general section 4 rate case or through the filing of *pro forma* tariff sheets to provide the Commission and parties with an opportunity to review the proposal prior to implementation. Once the review is complete, the pipeline can then implement the mechanism through a limited section 4 rate filing.

The Commission explained that when an existing customer's contract expires, and the conditions established in the Policy Statement exist (fully subscribed expansion subject to incremental rates, at least one bid above the existing rate, and a rate mechanism established in advance), the existing customer should be treated similarly to new customers for pipeline capacity, who face rates higher than the pre-expansion historic rate. When there is insufficient capacity to satisfy all the demands for service on the system, a higher matching rate will improve the efficiency and fairness of

capacity allocation by allowing new shippers who place greater value on obtaining capacity than the exiting shipper to better compete for the limited capacity that is available. Based on this rationale, the Commission further clarified that it would not mandate a one-time contract renewal for existing ROFR customers at their current maximum rate.

Finally, the February 9 order clarified the effective date of the Policy Statement and the process applicable to a shipper's ROFR at the termination of its existing contract. The requests for rehearing reconsideration or clarification address the effective date and the ROFR pricing policy.

Contemporaneously with the February 9 Order Clarifying Policy Statement, the Commission issued Order No. 637, the final rule in Docket Nos. RM98-10-000 and RM98-12-000.⁵ In Order No. 637, the Commission amended Part 284 of its open access regulations to among other things, narrow the ROFR to remove economic biases in the current rule, while still protesting captive customers' ability to resubscribe to long-term capacity. The Commission also discussed the interaction of the changes to the ROFR mechanism in Order No. 637 with the ROFR pricing policy set forth in the Policy Statement.

II. Requests for Rehearing, Reconsideration and/or Clarification

A. The Effective Date of the Policy Statement

Texas Eastern contends that the February 9 order was unresponsive to its request for clarification that the new policy applies to all certificate orders issued after September 15, 1999, regardless of the filing date of the underlying certificate applications. Texas Eastern states that its confusion arises due to the concurring opinion to the Policy Statement by three Commissioners which states that they would not apply the policy to certificate applications filed before July 29, 1998, the date on which the Commission issued its Notice of Proposed Rulemaking (NPR) proposing, among other things, to make changes to its policies with respect to certifying pipeline construction activities.⁶ Texas Eastern contends that a certificate

application's filing date should not determine whether the Policy Statement is applicable; it should apply to all certificate orders issued after September 15, 1999. To do otherwise, it argues, would result in unduly discriminatory treatment of similarly situated certificate applicants.

B. The Right of First Refusal

Because the February 9 order was issued contemporaneously with Order No. 637 and because both orders addressed the ROFR pricing policy, APGA, FPL Energy, Keyspan, and Process Gas filed their petitions in both the Order No. 637 proceeding and in this Policy Statement proceeding. Philadelphia OCA filed two separate requests for rehearing on the ROFR issue, one in this proceeding and the other, jointly with the National Association of State Utility Consumer Advocates and the Ohio Office of Consumers' Counsel, in the Order No. 637 proceeding. Its arguments in the two rehearing requests are substantially the same. These petitioners argue that the ROFR pricing policy is inconsistent with the NGA, the Policy Statement, and Commission regulations. They also ask the Commission to clarify how the policy will work in specific factual situations.

III. Discussion

The purpose of the Policy Statement is to provide the natural gas industry with guidance by stating the analytical framework the Commission will use to evaluate proposals for certifying new construction. In the Policy Statement, the Commission also explains the new pricing policy for capacity subject to the right of first refusal. A policy statement is not a rule, and generally objections to such a statement are not directly reviewable. Rather, such review must await implementation of the policy in a specific case.⁷ Therefore, the Commission declines to consider the issues raised in the requests for rehearing and reconsideration, but will consider such issues and arguments in the specific cases in which they arise.

As to Texas Eastern request for clarification of the effective date of the Policy Statement, we note that Texas Eastern among others raised this issue on rehearing in *Independence Pipeline Company*, Docket Nos. CP97-315-000 *et al.*, in which the certificate applications were filed prior to issuance of the

⁴ If there are no adverse effects on any of these interests, no balancing of benefits against adverse effects would be necessary and the Commission would proceed to a preliminary determination or a final order.

⁵ Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services, 63 FR 10156 (Feb. 25, 2000), III FERC Stats. & Regs. Preambles ¶31,091 (February 9, 2000).

⁶ Regulation of Short-term Natural Gas Transportation Services 63 *Fed. Reg.* 42,982 (August 11, 1998), FERC Stats. & Regs., Proposed Regulations 1988-1998 ¶32,533 (1998).

⁷ See, e.g., *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 75 FERC ¶61,026 (1996), citing *American Gas Assoc. v. FERC*, 888 F.2d 136, 151-2 (D.C. Cir. 1989).

NOPR.⁸ The Commission found that it would be unfair to apply the new Policy Statement to the underlying certificate applications since the applicants had no notice that the Commission was considering a change in its certificate policy at the time they filed their applications. Thus, the issue raised by Texas Eastern in its rehearing request regarding the effective date of the Policy Statement in this proceeding was raised in a specific case, the appropriate forum for such review.

In Order No. 637-A, issued May 19, 2000, the Commission responded to the issues raised by the petitioners in this proceeding with respect to the ROFR pricing policy.⁹ Since the Commission addressed at length certain generally applicable concerns raised by the petitioners, we need not repeat our responses here. A number of the petitioner's questions about the ROFR pricing policy do not have general application but are specific to the factual circumstances on a particular pipeline system. As we stated in Order No. 637-A, such complex factual situations should be addressed as they arise in individual pipeline proceedings to implement the ROFR pricing policy.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00-19596 Filed 8-4-00; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6847-4]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Environmental Health Committee (EHC) of the US EPA Science Advisory Board (SAB), will meet on August 30, 2000 in Courtroom B, at the International Trade Commission building, 400 E Street, SW., Washington DC. The meeting will begin 9:00 am and adjourn no later than 5 pm. All times noted are Eastern Daylight Time. The meeting is open to the public, however, seating is limited and available on a first come basis.

Important Notice: Documents that are the subject of SAB reviews are normally available from the originating EPA office

and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

Purpose of the Meeting

The Integrated Risk Information System (IRIS) data base contains EPA's consensus scientific position on potential adverse human health effects that may result from chronic exposure to specific agents in the environment. First publically available in 1988, the earliest IRIS assessments provided the results of the EPA deliberations culminating in consensus health hazard conclusions. Gradually the assessments included more of the details of the data and of the considerations which led to the consensus conclusions. Since 1995 (when the IRIS Pilot program was undertaken), EPA has taken several steps to ensure that the best available scientific information is included in IRIS assessments, including public requests for all relevant information to be submitted to EPA for consideration in the assessments, and external peer reviews of the assessments.

In response to a directive contained in an October 1999 report from Congress (HR 106-379) regarding EPA's appropriations for FY2000, EPA has evaluated the characterization of data variability and uncertainty in IRIS assessments. EPA's Office of Research and Development (ORD) National Center for Environmental Assessment (NCEA) first consulted with the SAB Executive Committee (EC) on Nov. 29, 1999, about a proposed approach to this study. This approach involved assembling a team of independent, qualified individuals, external to EPA, to evaluate a representative set of IRIS assessments. ORD/NCEA provided a progress report to the SAB at their March 2000 meeting (at which the EC suggested further enhancements to the study approach), and at the EC's July 12, 2000 meeting. The study undertaken reflects the SAB's advice on how best to proceed, given available resources and the Congress's deadline of October 2000.

Charge to the Committee

The Charge asks the EHC to respond to the following three questions:

- (a) How well did the study conform to the study plan developed with the SAB EC (November 1999 and March 2000)?
- (b) Does the SAB concur with the findings of the reviewers?
- (c) What further improvements, if any, might the Agency make in IRIS documentation in response to the study results?

Availability of Review Materials

The principal review document, Characterization of Data Uncertainty and Variability in IRIS Assessments, Pre-Pilot vs Pilot/post-Pilot, is available on the Internet at the SAB website (<http://www.epa.gov/sab>), or by request to Ms. Karen Hogan, phone (202) 564-3403, or by email to hogan.karen@epa.gov.

For Further Information

Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (10 minutes or less) must contact Samuel Rondberg, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (301) 812-2560, FAX (410) 286-2689; or via e-mail at samuelf717@aol.com. Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Rondberg no later than noon (EDT) on August 21, 2000.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. **Oral Comments:** In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. **Written Comments:** Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format:

⁸ 91 FERC ¶ 61,102 (2000).

⁹ Regulation of Short-term Natural Gas Transportation Services, Order No. 637-A, 65 Fed. Reg. 35,705 (June 5, 2000), III FERC Stats. & Regs. Regulations Preambles ¶ 31,099 (slip op. at 234-254) (May 19, 2000).

WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (<http://www.epa.gov/sab>) and in The FY1999 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564-4533 or via fax at (202) 501-0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access

Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: July 31, 2000.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 00-19914 Filed 8-4-00; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

July 31, 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 October 6, 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.

ADDRESS: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A-804, 445 Twelfth Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418-0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060-0790.

Title: Availability of Inside Wiring Information—Section 68.110(c).

Form No.: N/A.

Type of Review: Extension.

Respondents: Business or Other for Profit.

Number of Respondents: 1200.

Estimated Time Per Response: 1 Hour (avg.).

Total Annual Burden: 1200 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: \$5000.

Frequency of Response: On occasion.

Needs and Uses: Pursuant to Section 68.110(c) telephone companies must provide building owners with all available information regarding carrier-installed wiring on the customer's side of the demarcation point, including copies of existing schematic diagrams and service records. The information must be provided by the telephone company upon request of the building owner or agent thereof. The telephone company must charge the building owner a reasonable fee for this service, which shall not exceed the cost involved in locating and copying the documents. In the alternative, the telephone company may make these documents available for review and copying by the building owner. In this case, the telephone company may charge a reasonable fee, which shall not exceed the cost involved in making the documents available, and may also require the building owner to pay a

deposit to guarantee the documents' return.

OMB Control No.: 3060-0791.

Title: Accounting for Judgments and Other Costs Associated with Litigation, CC Docket No. 93-40.

Form No.: N/A.

Type of Review: Extension.

Respondents: Business or Other for Profit.

Number of Respondents: 1.

Estimated Time Per Response: 36 Hours (avg.).

Total Annual Burden: 36 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: \$0.

Frequency of Response: On occasion.

Needs and Uses: In CC Docket No. 93-240, the Commission considers the issue of the accounting rules and ratemaking policies that should apply to litigation costs incurred by carriers subject to Part 32 of its rules and regulations. The Commission determined that there should be special rules to govern the accounting treatment of federal antitrust judgments and settlements, in excess of avoided costs of litigation, but not for litigation expenses. The Commission concluded that these special rules should not apply to costs arising in other kinds of litigation. To receive recognition of its avoided costs of litigation, a carrier must make a demonstration.

OMB Control No.: 3060-0933.

Title: Community Broadband Deployment Database Reporting Form.

Form No.: FCC Form 460.

Type of Review: Extension.

Respondents: State, Local or Tribal Government; not for profit institutions; Number of Respondents: 30.

Estimated Time Per Response: .25 Hour (avg.).

Total Annual Burden: 7.5 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: \$0.

Frequency of Response: On occasion.

Needs and Uses: Pursuant to 47 USC Section 410(b), on October 8, 1999, the FCC convened a Federal-State Joint conference on Advanced Telecommunications Services to provide a forum for cooperative dialogue and information exchange between and among state and federal jurisdictions regarding the deployment of advanced telecommunications services. As part of this ongoing effort, a searchable on-line database of community broadband demand aggregation and deployment efforts was established.

Federal Communications Commission

Magalie Roman Salas,

Secretary.

[FR Doc. 00-19889 Filed 8-4-00; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 31, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 6, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, S.W., Room 1-A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418-0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060-0853.

Title: Receipt of Service Confirmation Form and Adjustment of funding Commitment and Modification to Receipt of Service confirmation form—Universal Service for Schools and Libraries.

Form No.: FCC Forms 486 and 500.

Type of Review: Extension.
Respondents: Business or Other for Profit; Not for Profit Institutions.
Number of Respondents: 40,000.
Estimated Time Per Response: 1.12 hrs (avg.).
Total Annual Burden: 45,000 Hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: \$0.
Frequency of Response: On occasion.
Needs and Uses: The Commission adopted rules providing support for all telecommunications services, Internet access, and internal connections for all eligible schools and libraries. To participate in the program schools and libraries must confirm that they are actually receiving the services eligible for support via FCC form 486. FCC Form 500 is used to adjust funding commitments and/or modify the dates for receipt of services.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00-19890 Filed 8-4-00; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

July 28, 2000.

SUMMARY: The Federal Communications, 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 estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 6, 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 St., SW., Washington, DC 20554 or via 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 internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0775.

Title: Separate Affiliate Requirement for Independent Local Exchange Carrier (ILEC) Provision of International, Interexchange Services, 47 CFR Sec. 64.1901-64.1903.

Form Number: N/A.

Type of Review: Extension of existing collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 10.

Estimated Time Per Response: 6,056 hours (avg).

Frequency of Response:

Recordkeeping requirement.

Total Annual Burden: 60,563 hours.

Total Annual Cost: \$1,003,000.

Needs and Uses: In CC Dockets 96-149 and 96-61, the FCC imposed recordkeeping requirements on independent local exchange carriers (ILECs). ILECs wishing to offer international, interexchange services must comply with the separate affiliate requirements of the Competitive Carrier Fifth Report and Order, which requires that an ILEC's international, interexchange affiliate must maintain books of account separate from such ILECs' local exchange and other activities. The regulation does not require that the affiliate maintain books of account that comply with the Commission's Part 32 rules; rather, as a separate legal entity, the international, interexchange affiliate must maintain its own books of account. Thus, this regulation ensures that ILECs providing international, interexchange services through a separate affiliate are in compliance with the Communications Act, as amended.

OMB Control Number: 3060-0742.

Title: Telephone Number Portability, 47 CFR Part 52, Subpart C, Section 52.21-52.33.

Form Number: N/A.

Type of Review: Revision of currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 1,685.

Estimated Time Per Response: 2 to 85.5 hours.

Frequency of Response:

Recordkeeping; on occasion reporting requirement; third party disclosure.

Total Annual Burden: 9,239 hours.

Total Annual Cost: N/A.

Needs and Uses: The 47 CFR Part 52, Subpart C implements the statutory requirements that local exchange carriers (LECs) provide number portability as set forth in Section 251 of the Telecommunications Act of 1996. The Commission requires the following information to be collected from various entities: (a) The request must specifically request long-term number portability in areas inside or outside the 100 largest Metropolitan Statistical Areas (MSAs), identify the area covered by the request, and provide a tentative date six or more months in the future when the carrier expects to need number portability in order to port prospective customers; (b) carriers that are unable to meet the deadlines for implementing a long-term number portability solution are required to file with the Commission at least 60 days in advance of the deadline a petition to extend the time by which implementation in its network will be completed; (c) incumbent LECs are required to include many details in their cost support that are unique to the number portability proceeding pursuant to the Cost Classification Order; for instance, incumbent LECs must demonstrate that any incremental overhead costs claimed in their cost support are actually new costs incremental overhead costs claimed in their cost support are actually new costs incremental to and resulting from the provision of long-term portability; and (d) telecommunications carriers are required to provide information about their international and regional end-user telecommunications revenues that will enable the regional database administrator to allocate the cost of the number portability regional databases in competitively neutral manner. All the requirements will be used to implement Section 251 of the Communications Act, as amended.

OMB Control Number: 3060-0848.

Title: Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 1,400.

Estimated Time Per Response: 0.5 to 2 hours.

Frequency of Response: On occasion reporting requirement; third party disclosure.

Total Annual Burden: 15,000 hours.

Total Annual Cost: N/A.

Needs and Uses: The requirements implement Section 706 of the Communications Act of 1934, as amended, to promote deployment of advanced services without significantly degrading the performance of other services. All requirements will be used by the Commission and CLECs to facilitate the deployment of advanced data services and to implement Section 706 of the Act. The following collections of information implement Section 706:

(a) Showing regarding loop condition, 47 CFR 51.319(h)(5);

(b) Request for alternative physical access, 47 CFR Section 51.319(h)(7);

(c) Showing of significant degradation, 47 CFR Section 51.230(b)-(c);

(d) Information on type of technology, 47 CFR Section 51.231(b)-(c);

(e) Any party seeking designation of a technology as a known disturber should file a petition for declaratory ruling, 47 CFR Section 51.232(b);

(f) Showing of network harm, 47 CFR Section 51.233(b)-(c);

(g) List of equipment and affidavit, 47 CFR Section 51.323(b);

(h) Space limitation documentation, 47 CFR Section 51.321(f);

(i) Report of available collocation space, 47 CFR Section 51.321(h);

(j) Information on security training, 47 CFR Section 51.323(I)(3);

(k) Access to spectrum management procedures and policies, 47 CFR Section 51.231(a);

(l) Rejection and loop information, 47 CFR Section 51.231(a); and

(m) Notification of performance degradation, 47 CFR Section 51.233.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00-19891 Filed 8-4-00; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket 99-168; FCC 00-282]

Auction of Licenses for the 747-762 and 777-792 MHz Bands Postponed Until March 6, 2001 (Report No. AUC-00-31-I (Auction No. 31))

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document postpones the upcoming auction of licenses in the 747-762 and 777-792 bands originally scheduled to begin September 6, 2000, in order to provide additional time for bidder preparation and planning. The auction is rescheduled to begin March 6, 2001.

DATES: Auction No. 31 will begin March 6, 2001.

FOR FURTHER INFORMATION CONTACT: Howard Davenport, Auctions Legal Branch at (202) 418-0660, or Lisa Stover, Auctions Operations at (717) 338-2804.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released July 31, 2000. The complete text of the public notice, including separate statements issued, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW, Washington, DC 20554. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, DC 20036, (202) 857-3800. It is also available on the Commission's web site at <http://www.fcc.gov>.

The upcoming auction of licenses in the 747-762 and 777-792 MHz band, scheduled to begin on September 6, 2000 is postponed until March 6, 2001, in order to provide additional time for bidder preparation and planning. Therefore, the FCC Form 175 application filing window for Auction No. 31 is now closed. Any applications that were in the system will be deemed ineffective and purged from the system. Applicants wishing to participate must file in compliance with the deadlines listed. The new filing window for FCC Form 175 will open on January 11, 2001. The new schedule is as follows:

Filing Deadline for FCC Form 175—February 2, 2001; 6 pm ET

Upfront Payment Deadline—February 16, 2001; 6 pm ET

Bidding Preference Form Deadline—February 20, 2001; 6 pm ET

Mock Auction—March 1-2, 2001

Auction Start Date—March 6, 2001

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

[FR Doc. 00-19893 Filed 8-4-00; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[DA 00-1639; Report No. AUC-34-E (Auction No. 34)]

Status of FCC Form 175 Applications Eligible To Participate in the Auction of Licenses for 800 MHz Specialized Mobile Radio (SMR) Services in the General Category Band (851-854 MHz) and Upper Band (861-865 MHz)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the 12 applicants that are eligible to participate in 800 MHz SMR Auction (Auction No. 34) and instructs those applicants on upfront payment information, bidding software and other pertinent information in reference to the auction. Also, this document identifies the 19 incomplete applications reported for this auction.

DATES: Auction No. 34 is scheduled to begin on Wednesday, August 16, 2000.

FOR FURTHER INFORMATION CONTACT: M. Nicole Oden, Auctions Legal Branch at (202) 418-0660 (regarding legal questions); Linda Sanderson, Auctions Operations (regarding bidding and general filing status) or Bob Reagle, Analyst, Auctions Operations (regarding bidding) at (717) 338-2888. For questions about payment or instructions for wiring upfront payments, contact Gail Glasser or Michelle Bennett, Auctions Accounting Group, at (202) 418-1995.

SUPPLEMENTARY INFORMATION: This is a summary of a public notice released July 24, 2000 ("Auction No. 34 Public Notice"). The complete text of the *Auction No. 34 Public Notice*, including all attachments, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (ITS, Inc.) 1231 20th Street, NW, Washington, DC 20036, (202) 857-3800. It is also available on the Commission's website at <http://www.fcc.gov/wtb/auctions>.

List of Attachments Available at the FCC

Attachment A—List of Accepted Applicants
Attachment B—List of Incomplete Applicants
Attachment C—Electronic Filing and Review of the FCC Form 175
Attachment D—Accessing the FCC Network to file FCC Form 175

1. The Federal Communications Commission ("FCC") has received 31 FCC Form 175 applications to

participate in Auction No. 34 scheduled to begin on Wednesday, August 16, 2000, for 1,053 licenses in the 800 MHz Band. The applications have been reviewed for completeness and compliance with the Commission's rules, and have been classified into the following categories:

Accepted for Filing—12 Applications
Incomplete—19 Applications

Accepted: Applications accepted for filing are listed in Attachment A. These applicants will become qualified bidders upon receipt of the required upfront payment due by 6:00 p.m. ET on Monday, July 31, 2000. See 47 CFR 1.2106. With respect to the FCC Form 175 applications, these applicants need take no further action except as may be necessary to maintain the accuracy of their applications. See 47 CFR 1.65. Also, applicants are advised that Attachment A includes FCC account numbers that were automatically created by the FCC software system for each applicant, and which are applicable for bidding only.

Incomplete: Applications found to be incomplete are listed alphabetically in Attachment B. Applicants whose FCC Form 175 applications have been deemed incomplete will receive overnight correspondence indicating what information is required to make the applications acceptable for filing. These applicants may become qualified bidders only if they: (1) Resubmit their applications by 6:00 p.m. ET on Monday, July 31, 2000, to correct the minor deficiencies indicated; and (2) make the required upfront payments by 6:00 p.m. ET on Monday, July 31, 2000. Applicants must also maintain the accuracy of their FCC Form 175 applications as required by the Commission's rules. In addition, applicants are advised that Attachment B includes FCC account numbers that were automatically created by the FCC software system for each applicant. These account numbers are applicable for bidding purposes only, should the applicant become eligible to participate in Auction No. 34.

2. The filing window for resubmitting FCC Form 175 applications is now open. Corrected applications must be filed no later than 6:00 p.m. ET on Monday, July 31, 2000. This will be the only opportunity to cure FCC Form 175 defects; late resubmissions will not be accepted. In addition, if an application remains incomplete or otherwise deficient after the resubmission deadline has passed, the application will be rejected.

Upfront Payment Deadline

3. Upfront payments and accompanying FCC Remittance Advice (FCC Form 159) for Auction No. 34 are due at Mellon Bank, Pittsburgh, Pennsylvania, by 6:00 p.m. ET on Monday, July 31, 2000. Payments must be made by wire transfer and applicants must include their Taxpayer Identification Numbers (TIN). No other payment method is acceptable for this auction. Applicants are reminded to use their TIN and not their FCC Account Numbers on the FCC Remittance Advice (FCC Form 159).

4. Applicants that have filed applications deemed to be incomplete, as noted in this public notice, must submit timely and sufficient upfront payments before the Commission will review their resubmitted applications. If such an application remains incomplete following its resubmission, the application will be dismissed. If the applicant has provided its Taxpayer Identification Number (TIN) and wire transfer instructions, the upfront payment will be refunded automatically.

Other Important Information

5. Internet Access and Filing: Effective Monday, July 17, 2000, the Bureau permitted the filing of FCC Form 175 via the Internet. As a result, two of the attachments previously provided in the *Auction No. 34 Announcing Public Notice* have been updated. See 65 FR 39388 (June 26, 2000). Specifically, the Bureau has amended Attachment C and Attachment H. The amended attachments are included in this public notice as Attachment C and D.

6. Qualified Bidders: Approximately one week after upfront payments have been received, resubmitted FCC Form 175 applications have been processed and reviewed, and payments and applications have been correlated, a public notice listing all applicants qualified to bid in the auction will be released. The same public notice will also include instructions on how to access the auction tracking tool software, a bidding schedule for the Mock auction, and the bidding schedule for the first day of the auction.

7. Prohibition of Collusion: Bidders are reminded that § 1.2105(c) of the Commission's rules prohibits applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements unless they have identified each other as parties with whom they have entered into agreements under § 1.2105(a)(2)(viii). For Auction No. 34, this prohibition

became effective at the filing deadline of short-form applications on Monday, July 17, 2000, and will end on the post-auction down payment due date. The post-auction down payment due date will be announced in a future public notice. If parties had agreed in principle on all material terms, those parties must have been identified on the short-form application under § 1.2105(c), even if the agreement had not been reduced to writing. If parties had not agreed in principle by the filing deadline, an applicant should not have included the names of those parties on its application, and must not have continued negotiations with other applicants for licenses in the same geographic area. For further details regarding the prohibition against collusion refer to the *Auction No. 34 Announcing Public Notice*.

8. In addition, applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anti-competitive behavior in the marketplace. Winning bidders will be required to disclose in their long-form applications the specific terms, conditions and parties involved in all bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process. Bidders found to have violated the anti-collusion rule may be subject to sanctions.

9. Ex Parte Rule: Applicants should also be aware that the Commission has generally exempted auction proceedings from the strict requirements of the *ex parte* rule found in § 1.2108 of the Commission's rules.

10. Mock Auction: All applicants found to be qualified bidders are eligible to participate in a mock electronic auction on Monday, August 14, 2000. In the *Qualified Bidders Public Notice*, the Bureau will announce when software for the mock auction will be posted on the World Wide Web.

11. Remote Bidding Software: Applicants are reminded that qualified bidders are eligible to bid either electronically or telephonically. To bid electronically, applicants should complete the software order form included in the *Auction No. 34 Announcing Public Notice* or contact the Auctions Hotline at (717) 338-2888. To ensure timely delivery of remote bidding software before the auction begins, the Commission requests receipt of software orders by 5:30 p.m. ET on Tuesday, August 1, 2000. The minimum hardware and software specifications required for the FCC remote bidding system are listed:

- CPU: Intel® Pentium or above.

- RAM: 16 MB (more recommended if you have multiple applications open).

- Hard Disk: 33 MB available disk space.

- 1.44 MB Floppy Drive or CD-ROM Drive (to install the Remote Bidding System).

- Modem: v.32bis 28.8 kbps Hayes® compatible modem (56.6 kbps recommended).

- Monitor: VGA or above.

- Mouse or other pointing device.

- Microsoft® Windows™ 95™ or 98™.

- We recommend that you use Netscape® Communicator™ 4.73. However, you can also use Netscape Communicator 4.7 or 4.72.

To download Netscape Communicator 4.73 free of charge, access the Netscape download site at <http://home.netscape.com/download/>.

Note: The FCC Remote Bidding System has not been tested in a Macintosh, OS/2, or Windows NT™ environment. Therefore, the FCC will not support operating systems other than Microsoft Windows 95 or 98. This includes any other emulated Windows environment.

12. Long-Form Applications: All applicants should be aware that at the long-form application stage, they will be subject to the more extensive reporting requirements contained in the Commission's Part 1 ownership disclosure rule. See 47 CFR 1.2112(b).

13. Bidder Alerts: All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

14. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326-2222 and from the SEC at (202) 942-7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060. Consumers who have concerns about specific proposals may also call the FCC National Call Center at (888) CALL-FCC ((888) 225-5322).

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

[FR Doc. 00-19894 Filed 8-4-00; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[DA 00-1657]

Public Safety National Coordination Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document advises interested persons of a meeting of the Public Safety National Coordination Committee ("NCC"), which will be held in Washington, D.C. The Federal Advisory Committee Act, Public Law 92-463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the ninth meeting of the Public Safety National Coordination Committee.

DATES: September 15, 2000 at 9:30 a.m.—12:30 p.m.

ADDRESSES: Department of Commerce, Herbert H. Hoover Building—HCHB Auditorium (First Floor), 1401 Constitution Avenue, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, Michael J. Wilhelm, (202) 418-0680, e-mail mwilhelm@fcc.gov. Press Contact, Meribeth McCarrick, Wireless Telecommunications Bureau, 202-418-0600, or e-mail mmccarri@fcc.gov.

SUPPLEMENTARY INFORMATION: Following is the complete text of the Public Notice: This Public Notice advises interested persons of the ninth meeting of the Public Safety National Coordination Committee ("NCC"), which will be held in Washington, D.C. The Federal Advisory Committee Act, Public Law 92-463, as amended, requires public notice of all meetings of the NCC.

Date: September 15, 2000.

Meeting Time: General Membership Meeting—9:30 a.m.—12:30 p.m.

Address: Department of Commerce, Herbert H. Hoover Building—HCHB Auditorium (First Floor), 1401 Constitution Avenue, N.W., Washington, D.C. 20230.

The NCC Subcommittees will meet from 9 a.m. to 5:30 p.m. the previous day. The NCC General Membership Meeting will commence at 9:30 a.m. and continue until 12:30 p.m. The agenda

for the NCC membership meeting is as follows:

1. Introduction and Welcoming Remarks
2. Administrative Matters
3. Report from the Interoperability Subcommittee
4. Report from the Technology Subcommittee
5. Report from the Implementation Subcommittee
6. Public Discussion
7. Other Business
8. Upcoming Meeting Dates and Locations
9. Closing Remarks

The FCC has established the Public Safety National Coordination Committee, pursuant to the provisions of the Federal Advisory Committee Act, to advise the Commission on a variety of issues relating to the use of the 24 MHz of spectrum in the 764–776/794–806 MHz frequency bands (collectively, the 700 MHz band) that has been allocated to public safety services. See The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010 and Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96–86, First Report and Order and Third Notice of Proposed Rulemaking, FCC 98–191, 14 FCC Rcd 152 (1998), 63 FR 58645 (11–2–98).

The NCC has an open membership. Previous expressions of interest in membership have been received in response to several Public Notices inviting interested persons to become members and to participate in the NCC's processes. All persons who have previously identified themselves or have been designated as a representative of an organization are deemed members and are invited to attend. All other interested parties are hereby invited to attend and to participate in the NCC processes and its meetings and to become members of the Committee. This policy will ensure balanced participation. Members of the general public may attend the meeting. To attend the ninth meeting of the Public Safety National Coordination Committee, please RSVP to Joy Alford or Bert Weintraub of the Policy and Rules Branch of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau of the FCC by calling (202) 418–0680, by faxing (202) 418–2643, or by E-mailing at jalford@fcc.gov or bweintra@fcc.gov. Please provide your name, the organization you represent, your phone number, fax number and e-mail address.

This RSVP is for the purpose of determining the number of people who will attend this ninth meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. Persons requesting accommodations for hearing disabilities should contact Joy Alford immediately at (202) 418–7233 (TTY). Persons requesting accommodations for other physical disabilities should contact Joy Alford immediately at (202) 418–0694 or via e-mail at jalford@fcc.gov. The public may submit written comments to the NCC's Designated Federal Officer before the meeting.

Additional information about the NCC and NCC-related matters can be found on the NCC website located at: <http://www.fcc.gov/wtb/publicsafety/ncc.html>.

Federal Communications Commission.

Jeanne Kowalski,

Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 00–19892 Filed 8–4–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2428]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

July 25, 2000.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by August 22, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96–98).

Number of Petitions Filed: 1.

Subject: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities. (CC Docket No. 98–67).

Number of Petitions Filed: 5.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–19854 Filed 8–4–00; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) Announces the Following Meeting

Name: Workshop to Suggest National Priorities for Asphalt Roofing and Paving Fumes Health Effects and Exposure Reduction Research.

Times And Dates: 10 a.m.—5 p.m., September 11, 2000; 8:30 a.m.—3 p.m., September 12, 2000.

Location: Regal Cincinnati Hotel, 150 West 5th Street, Cincinnati, Ohio 45202–2393.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: To discuss current knowledge and gaps regarding asphalt health effects and exposure reduction research, and to suggest priorities for filling identified gaps.

Matters To Be Discussed: The agenda will include a brief plenary session followed by working group discussions of the following research areas: (1) Sampling and analytical, (2) toxicology and laboratory, (3) human studies and epidemiology and (4) control technology. Viewpoints and suggestions from industry, labor, academia, government agencies and the public are invited.

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Frankie Smith, Office of the Director, Division of Applied Research and Technology, NIOSH, CDC, m/s R–2, 4676 Columbia Parkway, Cincinnati, OH 45226. Telephone (513) 458–7102, Email Fsmith@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 26, 2000.

Carolyn J. Russell,

*Director, Management Analysis and Services
Office, Centers for Disease Control and
Prevention.*

[FR Doc. 00-19884 Filed 8-4-00; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N-1425]

Agency Information Collection Activities; Proposed Collection; Comment Request; Human Tissue Intended for Transplantation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to FDA regulations for human tissue intended for transplantation.

DATES: Submit written comments on the collection of information by October 6, 2000.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-4659.

SUPPLEMENTARY INFORMATION: Under 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(c) and includes agency request

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, including each proposed extension of an existing 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 set forth in this document.

With respect to the following collection of information, FDA invites comments 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 of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Human Tissue Intended for Transplantation—Part 1270 (21 CFR Part 1270)—(OMB Control Number 0910-0302)—Extension

Under section 361 of the Public Health Service Act (42 U.S.C. 264), FDA issued regulations to prevent the transmission of human immunodeficiency virus (HIV), hepatitis B, hepatitis C, and other organisms causing infectious disease through the use of human tissue for transplantation. The regulations provide for inspection by FDA of persons and tissue establishments engaged in the recovery, screening, testing, processing, storage, or distribution of human tissue. These facilities are required to meet standards intended to ensure appropriate screening and testing of human tissue donors and to ensure that records are kept documenting that the appropriate screening and testing have been completed.

Section 1270.31(a) and (b) require written procedures to be prepared and followed for: (1) All significant steps in the infectious disease testing process, and (2) all significant steps in determining the medical history of the donor. Any deviation from the written procedures are to be recorded and justified. Section 1270.33(a) requires records to be maintained concurrently

with the performance of each significant step in the procedures of infectious disease screening and testing of human tissue donors. Section 1270.33(f) requires records be retained regarding the determination of the suitability of the donors and such records required under § 1270.21. Section 1270.33(h) requires all records be retained at least 10 years beyond the date of transplantation, distribution, disposition, or expiration, of the tissue, whichever is latest. Section 1270.35 requires specific records to be maintained to document: (1) The results and interpretation of all required infectious disease tests and results, (2) the identity and relevant medical records of the donor, (3) the receipt and distribution of human tissue, and (4) the destruction or other disposition of human tissue.

Respondents to this collection of information are manufacturers of human tissue-based products. Based on information provided by industry associations, there are approximately 224 manufacturers of conventional tissue and eye tissue. An estimated total of 309,000 conventional tissue products and 86,000 eye tissue products are manufactured per year. There are an estimated 6,500 donors of conventional tissue and 43,300 donors of eye tissue each year, with an estimated 12,900 unsuitable donors. In estimating the burden, FDA compared the agency regulations with the current voluntary standards of a number of industry organizations, such as the American Association of Tissue Banks and the Eye Bank Association of America. In those cases where a voluntary industry standard appears to be equivalent to the agency regulation, FDA has assumed that any recordkeeping burden would continue as customary and usual business practice of an establishment that are members of those organizations and therefore no additional burden is calculated. To account for establishments that may not be a member of an industry organization and would not perform these provisions as customary and usual practice, FDA is using 1 percent of the number of recordkeepers and total annual records as an estimation of the information collection burden on the tissue industry. The requirement for written procedures is considered a one-time burden, therefore, the information collection burden under § 1270.31(a) and (b) is for the recording and justifying of any deviations from the written procedures. The information collection burden for the regulation under § 1270.33 is being calculated with § 1270.35(a) because it

would be duplicating burden and difficult to calculate separately. The following recordkeeping estimates for the number of recordkeepers, total

annual records, and hours per record are based on information provided by industry, and FDA experience.

FDA estimates the burden of this information collection as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN ¹

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
1270.31(a) and 1270.31(b)	2	2	4	1.0	4
1270.33(a), (f), and (h), and 1270.35(a) and (b)	2	498	996	1.0	996
1270.35(c)	2	1,975	3,950	1.0	3,950
1270.35(d)	2	65	130	1.0	130
Total					5,080

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 28, 2000.

William K. Hubbard,
Senior Associate Commissioner for Policy,
Planning, and Legislation.

[FR Doc. 00-19864 Filed 8-4-00; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D-1407]

International Conference on Harmonisation; Draft Guidance on Safety Pharmacology Studies for Human Pharmaceuticals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "S7 Safety Pharmacology Studies for Human Pharmaceuticals." The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance describes general principles and recommendations for safety pharmacology evaluations. The draft guidance is intended to help protect clinical trial participants and patients receiving marketed products from potential adverse reactions to pharmaceuticals and to avoid unnecessary use of animals and other resources.

DATES: Submit written comments on the draft guidance by September 6, 2000.

ADDRESSES: Submit written comments on the draft guidance to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Copies of the draft guidance are available on the Internet at <http://www.fda.gov/cder/guidance/index.htm> or <http://www.fda.gov/cber/publications.htm>. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD-210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or 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 two self-addressed adhesive labels to assist the office in processing your requests.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Joseph J. DeGeorge, Center for Drug Evaluation and Research (HFD-24), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5476.

Regarding the ICH: Janet J. Showalter, Office of International Programs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input

from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In accordance with FDA's good guidance practices (GGP's) (62 FR 8961, February 27, 1997), this document is being called a guidance, rather than a guideline.

To facilitate the process of making ICH guidances available to the public, the agency is changing its procedure for publishing ICH guidances. Beginning April 2000, we will no longer include the text of ICH guidances in the **Federal Register**. Instead, we will publish a notice in the **Federal Register** announcing the availability of an ICH guidance. The ICH guidance will be placed in the docket and can be obtained through regular agency sources (see the **ADDRESSES** section). The draft guidance will be left in the original ICH format. The final guidance will be reformatted to conform to GGP style before publication.

In March 2000, the ICH Steering Committee agreed that a draft guidance entitled "S7 Safety Pharmacology Studies for Human Pharmaceuticals" should be made available for public comment. The draft guidance is the product of the Safety Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Safety Expert Working Group.

The draft guidance describes general principles and recommendations for safety pharmacology evaluations. The draft guidance is intended to help protect clinical trial participants and patients receiving marketed products from potential adverse reactions to pharmaceuticals and avoid unnecessary use of animals and other resources. The draft guidance generally applies to new chemical entities and biotechnology-derived products for human use. The draft guidance may be applied to marketed pharmaceuticals when appropriate. For example, adverse clinical events, a new patient population, or a new route of administration may raise concerns not previously addressed.

This draft guidance represents the agency's current thinking on safety pharmacology studies for human pharmaceuticals. 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 by September 6, 2000. 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 may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 31, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00-19941 Filed 8-2-00; 3:33 pm]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

National Native American Emergency Medical Services Association

AGENCY: Indian Health Service, IHS.

ACTION: Notice of single source cooperative agreement with the National Native American Emergency Medical Services Association.

SUMMARY: The Indian Health Service (IHS) announces the award of a cooperative agreement to the National Native American Emergency Medical Services Association (NNAEMSA) for a demonstration project to improve emergency medical services for Native American people by improving communications between the IHS and the Native American Emergency Medical Services providers and by supporting an Annual Educational Conference. The cooperative agreement is for a five-year project period effective July 1, 2000, to June 30, 2005. Total funding for the project is \$280,000.

The award is issued under the authority of the Public Health Service Act, Section 301(a), and is included under the Catalog of Federal Domestic Assistance number 93.933.

The specific objectives of the project are:

1. The Association will publish, at least twice a year, a newsletter for members. The newsletter will be available in both hard copy and electronically.

2. The Association will present an Annual Educational Conference which supports training and continuing education for Native American EMS providers.

3. The Association will establish links with other national Indian organizations and with professional groups to serve as advocates for the EMS providers who work with Native American people nationwide.

Justification for Single Source

This project has been awarded on a non-competitive single source basis. NNAEMSA is the only nationwide organization that specifically represents approximately 70 individual Native American EMS programs. These EMS programs provide care to over half-million Native American people who live on Indian reservations or who live in non-reservation areas with significant Native American populations. The population served by these programs is the same as IHS's user population.

Use of Cooperative Agreement

A cooperative agreement has been awarded because of anticipated substantial programmatic involvement by IHS staff in the project. The substantial programmatic involvement is as follows:

1. IHS staff will approve articles to be included in the newsletters and may, as

requested by the Association, provide articles.

2. Working with the Association, IHS staff will be involved in the development of the Annual Educational Conference to include topics of concern to the Agency and will be included in presentations as requested.

FOR FURTHER INFORMATION CONTACT: For program information, contact W. Craig Vanderwagen, M.D., Director, Division of Clinical and Preventive Services, Office of Public Health, Indian Health Service, Room 6A-55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-3024. For grants information, contact Ms. M. Kay Carpentier, Grants Management Officer, Division of Acquisitions and Grants Management, Indian Health Service, Suite 100, 12300 Twinbrook Parkway, Rockville, Maryland 20852, telephone (301) 443-5204.

Dated: July 21, 2000.

Michel E. Lincoln,

Acting Director.

[FR Doc. 00-19865 Filed 8-4-00; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4561-N-48]

Notice of Submission of Proposed Information Collection to OMB Affirmative Fair Housing Marketing Plan, Form HUD-935.2

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 6, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2529-0013) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and

Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708-2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5)

the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Affirmative Fair Housing Marketing Plan, Form HUD-935.2.

OMB Approval Number: 2529-0013.
Form Numbers: HUD-935.2.

Description of the Need for the Information and Its Proposed Use: This form is required of all applicants desiring to participate in HUD's insured housing programs, both single-family and multifamily. HUD uses this information to assess the adequacy of the applicant's actions under the Affirmative Fair-Housing Marketing Regulations (24 CFR 200.600) and the Affirmative Fair Housing Marketing Compliance Regulations (24 CFR 108).

Respondents: Business or other for-profit, not-for-profit institutions.

Frequency of Submission: on occasion.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting burden	3,006		1		3		9,018

Total Estimated Burden Hours: 9,018.
Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Wayne Eddins,

*Departmental Reports Management Officer,
Office of the Chief Information Officer.*

[FR Doc. 00-19937 Filed 8-4-00; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4561-N-49]

Submission of Proposed Information Collection to OMB Utility Allowance Adjustment

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 6, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding

this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502-0352) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708-0274. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will

be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Utility Allowance Adjustment.

OMB Approval Number: 2502-0352.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: The information will be used by the project owners to advise HUD and request approval of new utility allowances when the utility rate change results in a cumulative increase of 10 percent or more. If periodic adjustments to the utility allowance are not made, tenants would be required to pay a larger total tenant payment than is permissible.

Respondents: Business or other-for-profit.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Periodic Request	1,200		1		0.5		600

Total Estimated Burden Hours: 600.
Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 1, 2000.

Wayne Eddins,

*Departmental Reports Management Officer,
 Office of the Chief Information Officer.*

[FR Doc. 00-19938 Filed 8-4-00; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-921-00-1320-EL-P; NDM 90166]

AGENCY: Bureau of Land Management, Montana State Office

ACTION: Notice of Invitation—Coal Exploration License Application NDM 90166

SUMMARY: Members of the public are hereby invited to participate with The Coteau Properties Company in a program for the exploration of coal deposits owned by the United States of America in the following-described lands located in Mercer County, North Dakota:

- T. 145 N., R. 86 W., 5th P.M.
 Sec. 4: Lot 2, SE¹/₄NW¹/₄, SW¹/₄SW¹/₄;
- T. 144 N. R. 88 W., 5th P.M.
 Sec. 2: Lots 3, 4, S¹/₂NW¹/₄;
 Sec. 6: Lots 3, 4, 5, 6, 7, SE¹/₄NW¹/₄, E¹/₂SW¹/₄, SE¹/₄;
- Sec. 8: W¹/₂SW¹/₄.
- T. 145 N., R. 88 W., 5th P.M.
 Sec. 4: Lots 1, 2, S¹/₂NE¹/₄, N¹/₂SE¹/₄;
 Sec. 14: All;
 Sec. 22: All;
 Sec. 26: N¹/₂N¹/₂, SW¹/₄NE¹/₄, S¹/₂NW¹/₄, SW¹/₄, NW¹/₄SE¹/₄;
- Sec. 34: N¹/₂N¹/₂, SE¹/₄NE¹/₄, SW¹/₄, NE¹/₄SE¹/₄, S¹/₂SE¹/₄.
- T. 146 N., R. 88 W., 5th P.M.
 Sec. 14: S¹/₂SW¹/₄;
 Sec. 22: N¹/₂N¹/₂, SW¹/₄NE¹/₄, S¹/₂NW¹/₄, SW¹/₄, NW¹/₄SE¹/₄.
- T. 144 N., R. 89 W., 5th P.M.
 Sec. 12: NE¹/₄.
 3,928.19 acres.

SUPPLEMENTARY INFORMATION: Any party electing to participate in this exploration program shall notify, in writing, both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107-6800; and The Coteau Properties Company, 2000 Schafer Street, Suite D, Bismarck, North

Dakota 58502. Such written notice must refer to serial number NDM 90166 and be received no later than 30 calendar days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of this Notice in the Beulah Beacon newspaper, whichever is later. This Notice will be published once a week for two (2) consecutive weeks in the Beulah Beacon, Beulah, North Dakota.

The proposed exploration program is fully described, and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. The exploration plan, as submitted by The Coteau Properties Company, is available for public inspection at the Bureau of Land Management, Montana State Office, 5001 Southgate Drive, Billings, Montana, during regular business hours (9 a.m. to 4 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Either Stephen Van Matre, Mining Engineer, or Bettie Schaff, Land Law Examiner, Branch of Solid Minerals (MT-921), Bureau of Land Management, Montana State Office, P.O. Box 36800, Billings, Montana 59017-6800, telephone (406) 896-5082 or (406) 896-5063, respectively.

Dated: July 17, 2000.

Edward L. Hughes,

Acting Chief, Branch of Solid Minerals.

[FR Doc. 00-18486 Filed 8-4-00; 8:45 am]

BILLING CODE 4310--\$\$-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-100-1310-ES]

Availability of the Pinedale Anticline Record of Decision

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and implementing regulations, the Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Pinedale Anticline Natural Gas Exploration and Development Project Environmental Impact Statement (EIS). The ROD specifies the decision of the BLM Wyoming State Director regarding natural gas exploration and

development allowed, including restrictions and limitations, on Federal lands and minerals within the project area in Sublette County, Wyoming. Implementation of this decision will commence immediately (*i.e.*, it is issued full force and effect).

DATES: This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR 3165.4(c) within 30 days of the date on which this Notice appears in the **Federal Register**. That date is anticipated to be on or about August 8, 2000.

ADDRESSES: If an appeal is filed, the notice of appeal must be filed in the office of the Bureau of Land Management, State Director, P.O. Box 1828, Cheyenne, Wyoming 82003 within 30 days of the date BLM publishes their notice of the decision in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bill McMahan, telephone: (307) 352-0224. Copies of the ROD may be obtained from the following BLM offices: Pinedale Field Office, 432 East Mill Street, Pinedale, Wyoming 82941 (telephone 307-367-5300); Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901 (telephone 307-352-0224); or Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.

SUPPLEMENTARY INFORMATION: The Pinedale Anticline ROD records the decision made by the BLM Wyoming State Director, in consultation with the USDA—Forest Service, U.S. Army Corps of Engineers, and the State of Wyoming (cooperating agencies in the preparation of the EIS), for managing the Federal surface and mineral estate in the Pinedale Anticline Oil and Gas Exploration and Development Project Area (PAPA). The PAPA comprises approximately 197,345 acres of Federal, State, and private land. Of this total, approximately 157,719 surface acres (79.9 percent) are Federal managed by the BLM; 9,766 surface acres (5.0 percent) are administered by the State of Wyoming; and 29,860 acres (15.1 percent) are privately controlled.

The BLM approves the Pinedale Anticline Operators proposal for 700 producing well pads over the next 10 to 15 years within the PAPA. The approved development will be

implemented under the "Resource Protection (RP) Alternative on Federal Lands and Minerals," as modified. The ROD recognizes the PAPA as one which has been relatively undisturbed by development for natural gas and that there are important and highly sensitive natural resources and human values within or adjacent to the area which require consideration and protection from unnecessary or undue degradation (Federal Land Policy and Management Act [FLPMA]—section 302). The ROD recognizes that in order to develop 700 productive well pads in the PAPA, as many as 900 well pads may need to be constructed and drilled and that as many as 200 of these well pads may be plugged, abandoned and reclaimed because the wells would be dry holes or uneconomical to produce. The ROD also recognizes that not all of the well pads will be located on Federal lands/minerals. Some will be located on State and private lands/minerals. Therefore, monitoring for project consistency with the scope of EIS analysis will be based on a total of 700 producing well pads.

BLM believes that implementation of the "Resource Protection Alternative on Federal Lands and Minerals," as modified, will provide the best balance of multiple uses within the PAPA, and will sustain the long-term yield of resources while promoting stability of local and regional economies, environmental integrity, and conservation of resources for future generations (NEPA section 101 and FLPMA, section 302). The RP Alternative on Federal Lands and Minerals will provide for the management of the PAPA in a manner that allows for natural gas exploration and development while continuing to provide for the existing principal and major uses recognized by the land use plan for this area (e.g., domestic livestock grazing; fish and wildlife habitat protection, utilization, and development; mineral exploration and production; utility and road rights-of-way; visual resource protection; outdoor recreation).

The ROD, to the extent allowed by law, incorporates restrictions and mitigative measures in consideration of the need to prevent unnecessary or undue degradation of important and sensitive resources and human values, and in consideration of Federal, State, local agency, public, and affected Indian tribe concerns raised during scoping and in comments received on the draft and final EIS. The ROD incorporates a process recommended by the Environmental Protection Agency (EPA), called Adaptive Environmental Management (AEM), which will provide

for project implementation oversight to ensure maximum consideration for the reasonable protection of identified concerns through its development and implementation. The AEM Process will be designed to ensure that the implementation of the Pinedale Anticline Project is managed and monitored in a manner that will guide midcourse corrections in adapting to inevitable problems or changes associated with and inherent in each authorization for the implementation, operation, and abandonment of activities to develop the mineral resource.

The ROD authorizes the BLM Pinedale Field Manager or Authorized Officer to begin processing Applications for Permit to Drill (APDs), Sundry Notices (SNs), Rights-of-Way (ROWs), and Temporary Use Permits (TUPs) on public lands administered by the BLM for the Pinedale Anticline Project Operators and for companies contracted by the Operators. Approval of individual applications will authorize the implementation of the various components of the Pinedale Anticline Project (e.g., access road and well pad construction, gas gathering pipeline and production facilities installation, etc.). The ROD provides the BLM Pinedale Field Manager approval to permit the following project components on BLM-administered Federal lands and minerals within the PAPA, subject to the constraints specified. Proposed development beyond the specified levels will require the preparation of a supplemental environmental impact analysis to the EIS.

- 900 Initial well pad locations on all lands and minerals within the PAPA.
- 700 Producing wells and/or well pads on all lands and minerals within the PAPA.
- 700 Production facilities at individual well locations.
- Central production facilities.
- 4 Compressor facility sites.
- Water wells for drilling/completion water.
- 1 BP Amoco Field Office.
- ~121.5 Miles of sales pipeline corridor for multiple pipelines.
- ~276.0 Miles of access road (including collector, local and resource roads).
- ~280.0 Miles of gathering pipeline system.

The decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR 3165.4(c). If an appeal is filed, your notice of appeal must be filed in this office (Bureau of Land Management, State Director, P.O. Box 1828,

Cheyenne, Wyoming 82003) within 30 days of the date BLM publishes their notice of the decision in the **Federal Register**. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (pursuant to 43 CFR 3165.4(c)) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed in 43 CFR 3165.4(c). Copies of the notice of appeal and petition for a stay must also be submitted to the Interior Board of Land Appeals and to the appropriate office of the Solicitor at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Dated: July 27, 2000.

Alan R. Pierson,
State Director.

[FR Doc. 00-19808 Filed 8-4-00; 8:45 am]

BILLING CODE 4310-22-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-00-1430-ES; AZA-31250]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands, are located in Maricopa County, Arizona, and found suitable for lease or conveyance under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et seq.*). The lands are not needed for federal purposes. Lease or conveyance is consistent with current Bureau of Land Management (BLM) land use planning and would be in the public interest. The following described lands, located near the Town of Buckeye, Maricopa County, have been found suitable for lease or conveyance to Maricopa County Parks and Recreation for a regional park.

Gila and Salt River Meridian, Arizona

T.3 N., R. 4 W.,
Sections, 1 S $\frac{1}{2}$ N $\frac{1}{2}$ S $\frac{1}{2}$; 11, E $\frac{1}{2}$ E $\frac{1}{2}$ E $\frac{1}{2}$; 12, All; 13, All; 14,
E $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$; 24,
E $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$; 25, E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$; 36,
NE $\frac{1}{4}$ E $\frac{1}{2}$ NW $\frac{1}{4}$.

Containing approximately 2880.00 acres.

The lease or conveyance would be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

3. A right-of-way for ditches and canals constructed by the authority of the United States.

4. Those rights as B7J Cattle Company, may have to that portion of the Douglas Grazing Allotment.

FOR FURTHER INFORMATION CONTACT: JoAnn Goodlow at the Phoenix Field Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027, (623) 580-5548.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act. For a period of 45 days from the date of publication of this Notice, interested parties may submit comments regarding the proposed lease, conveyance or classification of the lands to the Field Office Manager, Phoenix Field Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

Classification Comments

Interested parties may submit comments involving the suitability of the land for: a Regional park, for Maricopa County. Comments on the classification are restricted to whether the land is physically suited for the proposals, whether the uses will maximize the future use or uses of land, whether the uses are consistent with local planning and zoning, or if the uses are consistent with state and federal programs.

Application Comments

Interested parties may submit comments regarding the specific uses proposed in the applications and plans of development, whether BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for proposed uses. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication in the **Federal Register**.

Dated: July 27, 2000.

Deborah K. Rawhouser,

Assistant Field Manager, Resource Use & Protection.

[FR Doc. 00-19872 Filed 8-4-00; 8:45 am]

BILLING CODE 4310-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-080-1430-EU; Serial No. NMNM-104317]

Notice of Realty Action; Environmental Assessment for Noncompetitive Sale of Public Lands in Eddy County

AGENCY: Bureau of Land Management.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) is initiating the preparation of an Environmental Assessment (EA) for a direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat 2750, 43 U.S.C. 1713), at not less than the appraised fair market value. The land will not be offered for sale until at least 60 days after the date of this notice.

T. 17 S., R. 30 E., NMPM,
Sec. 20: Lots 13, 14, 15,
S½SE¼SE¼NE¼SE¼.

Containing approximately 5 acres.

The land is hereby segregated from appropriation under the public land laws, including the mining laws, pending issuance of patent or 270 days from date of this notice, whichever occurs first.

The land is to be offered by direct sale to Ray Westall, the adjacent land owner, to correct an encroachment on public land. Mr. Westall will construct a pipe yard on the location.

The patent, when issued, will reserve all minerals to the United States and will be subject to existing rights-of-way. Detailed information concerning the reservation, as well as specific conditions of the sale, are available for review at the Carlsbad Field Office, Bureau of Land Management, 620 East Green, Carlsbad, New Mexico 88220.

For a period of 45 days from the date of this notice, interested parties may submit comments to Bobbe Young, Lead Realty Specialist, P.O. Box 1778, Carlsbad, NM 88220. Any adverse comments will be evaluated by the Field Manager, who may vacate or modify this realty action and issue a final determination. In absence of objections, this realty action will become the final determination of the Department of the Interior.

Dated: July 28, 2000.

Douglas A. Melton,

Acting Field Manager.

[FR Doc. 00-19918 Filed 8-4-00; 8:45 am]

BILLING CODE 4310-FB-M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 29, 2000. Pursuant to § 60.13 of 36 CFR part 60, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by August 22, 2000.

Carol D. Shull,

Keeper of the National Register.

COLORADO

Jefferson County

Rio Grande Southern Railroad Engine No. 20,
17155 W. 44th Ave., Golden, 00001003

Larimer County

Armstrong Hotel, 249-261 S. College Ave.,
Fort Collins, 00001002

IOWA

Dallas County

Bruce's Snowball Market #1 Addition
(Downtown Perry, Iowa MPS), 921
Railroad St., Perry, 00001004
Downtown Perry Historic District
(Downtown Perry, Iowa MPS) bet. 3rd St.,
Lucinda St., 1st Ave., and Railroad St.,
Perry, 00001005
Jones Business College, 1305 Otley Ave.,
Perry, 00001006

MARYLAND

Baltimore County

Baltimore County School No. 7, 200 Ashland
Rd., Cockeysville, 00001007

MISSOURI

St. Louis County

Burkhardt Historic District, 16662-16678
Chesterfield Airport Rd., Chesterfield,
00001011

St. Louis Independent City

Balmer & Weber Music House Co. Building,
1004 Olive St., St. Louis, 00001008
Lucas Avenue Industrial Historic District,
bounded by Washington, Delmar, 20th and
21st Sts., St. Louis, 00001009
South Side National Bank, 3606 Gravois
Ave., St. Louis, 00001010

NEW YORK**Bronx County**

Jerome Park Reservoir, Goulden, Reservoir and Sedgwick Aves., Bronx, 00001014

New York County

First Hungarian Reformed Church, 344-346 East 69th St., New York, 00001012
Lower East Side Historic District, roughly bounded by Allen St., E. Houston, Essex St., Canal St., Eldridge St., E. Broadway, and Grand St., New York, 00001015

Queens County

Douglaston Hill Historic District, roughly bounded by Douglaston Pkwy., Northern Blvd., 244th St., 243rd St., and Long Island R.R., Douglaston, 00001016
Firemen's Hall, 13-28 123rd St., College Point, 00001013

OREGON**Deschutes County**

Congress Apartments, 221, 223, 225, 227, and 229 NW Congress St., Bend, 00001020
Multnomah County First Regiment Armory Annex, 123 NW Eleventh Ave., Portland, 00001017
Meier & Frank Warehouse, 1438 NW Irving St., Portland, 00001021
Tichner, Abraham, House, 114 SW Kingston Ave., Portland, 00001022
Weinhard Brewery Complex, 1131-1133 W. Burnside, Portland, 00001018

Union County

Dry Creek School, 69281 Summerville Rd., Summerville, 00001019

[FR Doc. 00-19885 Filed 8-4-00; 8:45 am]

BILLING CODE 4310-70-P

DEPARTMENT OF JUSTICE**Immigration and Naturalization Service****Agency Information Collection Activities: Comment Request**

ACTION: Notice of information collection under review; application for asylum and for withholding of removal.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until October 6, 2000.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Asylum and for Withholding of Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I-589. Office of International Affairs, Asylum Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected on this form will be used to determine whether an alien applying for asylum and/or withholding of removal in the United States is classifiable as a refugee, or eligible for protection under the Convention Against Torture, and is eligible to remain in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50,000 responses at 12 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 60,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202-514-3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated

public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 1, 2000.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00-19856 Filed 8-4-00; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF JUSTICE**Immigration and Naturalization Service****Agency Information Collection Activities: Comment Request**

ACTION: Notice of information collection under review; arrival record.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until October 6, 2000.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Arrival Record.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I-94A OT. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected is captured electronically as part of a pilot program established by the Service in cooperation with two participating carriers to streamline document handling and data processing. The information collected will be used by the Service to document an alien's arrival and departure to and from the United States and may be evidence of registration under certain provisions of the INA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 25,000 responses at 3 minutes (.05 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,250 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202-514-3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 1, 2000.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00-19857 Filed 8-4-00; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-37,717]

CV Materials, Ltd.; Urbana, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 30, 2000, in response to a petition filed on behalf of workers at CV Materials, Ltd., Urbana, Ohio.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C., this 24th day of July, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00-19882 Filed 8-4-00; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-37,876]

ITT Industries, Fluid Handling Systems Oscoda, Michigan; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 10, 2000, in response to a petition filed by the company on behalf of workers at ITT Industries, Fluid Handling Systems, Oscoda, Michigan.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C., this 20th day of July, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00-19881 Filed 8-4-00; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR**Employment and Training Administration****Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance**

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address show below, not later than August 17, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 17, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 24th day of July, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 07/24/2000

TA-W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,896	Knowles Electronics LLC (Comp)	Itasca, IL	07/05/2000	Microphones and Speaker Products.
37,897	Osram Sylvania (Wrks)	St. Mary's, PA	07/12/2000	Lamps.
37,898	Onix Process Analysis (Comp)	Angleton, TX	07/10/2000	Processors to Test Gas Quality.
37,899	Hannah Hardy, Inc. (Wrks)	New York, NY	07/13/2000	Dresses.
37,900	Oxy USA, Inc. (Comp)	Houston, TX	06/26/2000	Oil and Gas.
37,901	Oxo Welding Equipment Co (Wrk)	Troy, OH	07/10/2000	Welding Guns.
37,902	Toastmaster, Inc. (Comp)	Laurinburg, NC	07/07/2000	Household Clocks and Timbers.
37,903	Toni Industries, Inc. (Wrks)	New York, NY	07/03/2000	Dresses.
37,904	Staffing Solutions (Comp)	Colorado Spring, CO	06/28/2000	Contract Employees to Quantum Corp.
37,905	Cooper Industries/Light (Comp)	E. Grove Village, IL	07/10/2000	Lighting Fixtures.
37,906	Automation Technology (Comp)	Santa Cruz, CA	07/03/2000	Test Equipment—Hard Disk.
37,907	Indiana Knitwear (Wrks)	Greenfield, IN	06/22/2000	Shirts, Sweatpants, Shorts.
37,908	Sweatt Industries/Sentry (Wrks)	Odessa, TX	07/09/2000	Electrical Poleline—oilwell.
37,909	Duke Energy Field Service (Comp)	Ada, OK	07/07/2000	Natural Gas Gathering and Processing.
37,910	Mallinckrodt, Inc. (Comp)	Carlsbad, CA	07/05/2000	Critical Care Medical Equipment.
37,911	Pillowtex Corp (Wrks)	Rockymount, NC	07/12/2000	Pillows.
37,912	Aquatech, Inc. (Comp)	McMinnville, TN	07/06/2000	Denim Garment Finishing.
37,913	United Filters, Inc. (Comp)	Amarillo, TX	07/17/2000	String Wound Filters.
37,914	Joseph Timber LLC (Wrks)	Joseph, OR	07/14/2000	Dimension Lumber.
37,915	ASAP Sewing (Wrks)	Andrews, SC	07/12/2000	T-Shirts.
37,916	Alloy Machining Operation (Comp)	Miamisburg, OH	07/12/2000	Automatic Manifolds.

[FR Doc. 00-19879 Filed 8-4-00; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-37,885]

PF Technologies; Phoenix, AZ; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 17, 2000, in response to a petition filed by a company official on behalf of workers at PF Technologies, Phoenix, Arizona.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C., this 25th day of July, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00-19880 Filed 8-4-00; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; O*NET Data Collection Program

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information. This is done in accordance with the Paperwork Reduction Act of 1995 (PRA95), 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. With this notice, the Employment and Training Administration is soliciting comments concerning the proposed O*NET (Occupational Information Network) Data Collection Program. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the ADDRESSES section of this notice or can be downloaded from the Internet at:

<http://www.onetcenter.org/dataCollection/ombclearance.html> or from www.doleta.gov/programs/onet.

DATES: Written comments must be submitted to the office listed in the ADDRESSES section of this notice on or before October 6, 2000.

ADDRESSES: Send comments regarding the O*NET Data Collection Program to James Woods, Chief, Division of Evaluation and Skills Assessment, Office of Policy and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N5637, Washington, D.C. 20210. The telephone number is 202-693-3660 (this is not a toll-free number). Comments may also be submitted via e-mail to: O*NET@doleta.gov.

FOR FURTHER INFORMATION CONTACT: James Woods, Chief, Division of Evaluation and Skills Assessment, telephone number 202-693-3660. (See ADDRESSES section.)

SUPPLEMENTARY INFORMATION:

I. Background

The O*NET Data Collection Program is planned to be a continuing activity to develop and maintain a current database on detailed characteristics of occupations. The resulting database will be the most comprehensive standard source of occupational information in the nation. O*NET will be at the center of an extensive network of occupational information used by a wide range of audiences, from individuals making career decisions, to public agencies and schools making workforce investment decisions, to employers making staffing

and training decisions. O*NET also will provide a common language and framework to meet administrative needs of various federal programs, including workforce investment and training programs of the Departments of Labor, Education, and Health and Human Services.

In 1999, the Employment and Training Administration received OMB approval to conduct the O*NET Data Collection Program Survey Pretest (OMB No. 1205-0400, exp. 11/99). The Pretest provided information on the impact of several survey features on response rates. The use of alternative sample sizes per establishment and the use of in-kind incentives were tested for their impact on response rates for businesses. Alternatives on outreach and types of return envelope postage were tested for their impact on employee response rates.

The Pretest has been completed, and its results indicated significant increases in response rates were achieved with an optimum combination of specific tested survey features. Pretest results are described in the supporting documentation to this ICR.

A. Survey of Establishments and Incumbent Workers

Information will be collected in a two-stage design, including a statistical sample of businesses expected to employ workers in the specific occupations being surveyed, and a sample of workers in the occupations within the sampled businesses. These workers will be asked to complete the survey instruments.

For selected occupations, two alternative methods will be used.

B. Survey of Membership of Occupational Associations

The first is to contact professional associations that include a majority of the occupation's incumbent workers in their membership and sample from their member roster. These sampled workers will be surveyed in the same manner as workers identified in the two-stage sample design.

C. Subject Matter Experts

The second alternative is to identify subject matter experts for selected occupations. The experts will be asked to complete the questionnaires, as well as the demographic items and the task list for the specific occupation being surveyed.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information, e.g., permitting electronic submissions of responses.

III. Current Action

The O*NET Data Collection Program will collect information on up to 300 occupations in the first year, increasing the number of occupations in subsequent years to allow collection on all 974 O*NET occupations over three to five years. The O*NET occupations either match to, or represent more detailed breakouts of occupations from the 1998 Standard Occupational Classification.

O*NET uses five survey questionnaires: (1) Skills, (2) Generalized Work Activities, which are general types of job behaviors occurring on multiple jobs, (3) Abilities, (4) Work Context, the physical and social factors that influence the nature of work, and (5) Knowledge. (Copies of these questionnaires are also available from the Internet site already noted.) All but the Abilities questionnaire will be used to survey incumbent workers identified using the two-stage sample design. Abilities will be rated by analysts. While the sample of incumbent workers is designed to provide responses from four questionnaires, to reduce response burden each incumbent will be randomly assigned only one of the four questionnaires. Incumbents also will be asked to provide basic demographic information, and to complete a brief task inventory for their specific occupation. Incumbents will be offered the option of going to an Internet website to complete an on-line questionnaire.

The name of incumbent respondents will not be requested on the survey form and all individual responses will be maintained in strict confidentiality. The data from job incumbents and others will be used to develop mean ratings on the various items.

The resulting data will be subjected to extensive analysis, and will be made available to the public through scheduled updates to the O*NET database.

Type of Review: New.

Agency: Employment and Training Administration.

Title: O*NET Data Collection Program.

OMB Number: 1205-0NEW.

Affected Public: Employers (includes private and not-for-profit businesses and government); individuals (incumbent workers, subject matter experts).

Total Respondents: 24,000.

Frequency of Response: Annual.

Total Responses: 24,000.

Average Time Per Response:

Employer response time is 1 hour, 35 minutes. Incumbent worker response time is 30 minutes. Subject matter expert response time is 2 hours, 30 minutes.

Estimated Total Annual Burden

Hours: 22,183 hours.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$0

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, D.C., this 1st day of August, 2000.

Gerard Fiala,

Administrator, Office of Policy and Research, Employment and Training Administration.

[FR Doc. 00-19883 Filed 8-4-00; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)] This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and

financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before October 6, 2000.

ADDRESSES: Send comments to Brenda C. Teaster, Acting Chief, Records Management Division, 4015 Wilson Boulevard, Room 709A, Arlington, VA 22203-1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to bteaster@msha.gov, along with an original printed copy. Ms. Teaster can be reached at (703) 235-1470 (voice), or (703) 235-1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Brenda C. Teaster, Acting Chief, Records Management Division, U.S. Department of Labor, Mine Safety and Health Administration, Room 709A, 4015 Wilson Boulevard, Arlington, VA 22203-1984. Ms. Teaster can be reached at bteaster@msha.gov (Internet E-mail), (703) 235-1470 (voice), or (703) 235-1563 (facsimile).

SUPPLEMENTARY INFORMATION:

1. Background

Section 77.1101(a) requires operators of surface coal mines and surface work areas of underground coal mines to establish and keep current a specific escape and evacuation plan to be followed in the event of a fire.

Section 77.1101(b) requires that all employees be instructed in current escape and evacuation plans, fire alarm signals, and applicable procedures to be followed in case of fire. The training and record keeping requirements associated with this standard are addressed under OMB No. 1219-0070 (Certificate of Training, MSHA Form 5000-23).

Section 77.1101(c) requires escape and evacuation plans to include the designation and proper maintenance of an adequate means for exiting areas where persons are required to work or travel including buildings, equipment, and areas where persons normally congregate during the work shift.

While escape and evacuation plans are not subject to approval by MSHA district managers, MSHA inspectors evaluate the adequacy of the plans during their inspections of surface coal mines and surface work areas of underground coal mines.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection

related to the Escape and Evacuation Plans. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
 - Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
 - Enhance the quality, utility, and clarity of the information to be collected; and
 - Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.
- A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page (<http://www.msha.gov>) and selecting "Statutory and Regulatory Information" then "Paperwork Reduction Act Submissions (<http://www.msha.gov/regspwork.htm>)," or by contacting the employee listed above in the For Further Information Contact section of this notice for a hard copy.

III. Current Actions

MSHA proposes to continue the information collection requirement related to escape and evacuation plans for surface coal mines and surface work areas of underground coal mines for an additional 3 years. MSHA believes that eliminating this requirement would expose miners to unnecessary risk of injury or death should a fire occur at or near their work location.

Type of Review: Extension.

Title: Escape and Evacuation Plans.

Recordkeeping: Indefinite.

OMB Number: 1219-0051.

Affected Public: Business or other for-profit institutions.

Cite/Reference/Form/etc.: 30 CFR 77.1101.

Total Respondents: 59.

Frequency: On occasion.

Total Responses: 59.

Average Time per Response: 4.45 hours.

Estimated Total Burden Hours: 263 hours.

Total Burden Cost (capital/startup): \$0.

Total Annualized Capital/Startup Costs: \$0.

Total Operating and Maintenance Costs: \$0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 26, 2000.

Brenda C. Teaster,

Acting Chief, Records Management Division.

[FR Doc. 00-19401 Filed 8-4-00; 8:45 am]

BILLING CODE 4510-43-M

NUCLEAR REGULATORY COMMISSION

[Docket No. SSD 99-27; ASLBP No. 00-778-06-ML]

Graystar, Inc.; Notice of Reconstitution

Pursuant to the authority contained in 10 CFR 2.721 and 2.1207, the Presiding Officer in the captioned 10 CFR part 2, Subpart L proceeding is hereby replaced by appointing Administrative Judge Ann M. Young as Presiding Officer in place of Administrative Judge G. Paul Bollwerk, III.

All correspondence, documents, and other material shall be filed with the Presiding Officer in accordance with 10 CFR 2.1203. The address of the new Presiding Officer is: Administrative Judge Ann M. Young, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001.

Issued at Rockville, Maryland, this 31st day of July 2000.

G. Paul Bollwerk III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 00-19901 Filed 8-4-00; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-327 and 50-328]

Tennessee Valley Authority (Sequoyah Nuclear Plant, Units 1 and 2); Exemption

I

The Tennessee Valley Authority (TVA or the licensee) is the holder of Facility Operating License No. DPR-77 for operation of the Sequoyah Nuclear Plant, Unit 1, and DPR-79 for Unit 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (Commission or NRC) now or hereafter in effect.

The Sequoyah units are pressurized water reactors located in Hamilton County, Tennessee.

II

By application dated February 11, 2000, TVA requested an exemption from the requirements of Title 10 of the Code of Federal Regulations, Section 50.44 (10 CFR 50.44), "Standard for Combustion Gas Control in Light-Water-Cooled Power Reactors," 10 CFR 50.46, "Acceptance Criteria for Emergency Core Cooling Systems [ECCS] for Light Water Nuclear Power Reactors," and 10 CFR Part 50, Appendix K, "ECCS Evaluation Models." These regulations set forth requirements for use of zircaloy or ZIRLO fuel rod cladding material by specifying acceptance criteria for ECCS and the fuel cladding performance evaluation for normal operation, anticipated operational occurrences and accident conditions. Specifically, 10 CFR 50.46 contains acceptance criteria for ECCS for light water nuclear power reactors fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO cladding. Further, 10 CFR 50.46 states that ECCS cooling performance following postulated loss-of-coolant accidents (LOCA) must be calculated in accordance with an acceptable evaluation model. Appendix K to 10 CFR Part 50 contains the required and acceptable features for ECCS evaluation models. Finally, 10 CFR 50.44 contains requirements for the control of hydrogen gas that may be generated after a postulated LOCA in light water power reactors fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO cladding. Because TVA proposes to use a fuel cladding that is not specified in the rule, TVA sought an exemption from these regulations in order to use a newly designed cladding and structural material, designated M5, developed by Framatome Cogema Fuels (FCF). The licensee's exemption request was submitted in conjunction with an application for operating license amendments to revise the Sequoyah Unit 1 and 2 Technical Specifications to allow use of the M5 alloy for fuel rod cladding. The proposed amendment will be issued concurrently with this exemption. Together, the exemption and amendments will allow M5 to be used at both Sequoyah units.

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security,

and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR Part 50.12(a)(2)(ii), "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule."

III

TVA proposes to use M5 for fuel rod cladding, fuel assembly spacer grids, fuel rod end plugs, the fuel assembly guide, and instrument tubes. M5 is an alloy composed of approximately 99 percent zirconium and 1 percent niobium, is designed for high fuel rod burnup conditions, and exhibits superior corrosion resistance and reduced irradiation-induced growth. In September 1997, FCF submitted Topical Report BAW-10227P, "Evaluation of Advanced Cladding and Structural Material (M5) in PWR Reactor Fuel," for NRC staff review. The topical report justified the use of M5 as cladding and structural material in pressurized-water reactor cores and provided the licensing basis for the FCF advanced cladding and structural material. In a safety evaluation report (SER) dated February 4, 2000, NRC approved Topical Report BAW-10227P, concluding that the M5 properties and the mechanical design methodology, as defined in BAW-0227P, "are in accordance with SRP [Standard Review Plan] Section 4.2, 10 CFR 50.46, and 10 CFR Part 50, Appendix K and therefore, are acceptable for reload licensing applications up to rod averaged burnup levels of 62,000 MWd/MTU and 60,000 MWd/MTU for Mark B and Mark-BW fuel designs, respectively." The staff SER and the approved topical report were published on February 11, 2000, as BAW-10227P-A. The staff has determined that BAW-10227P-A is applicable to Sequoyah because the fuel designs are consistent with the requirements of the topical report.

The underlying purpose of 10 CFR 50.46 is to ensure that facilities meet the appropriate acceptance criteria for ECCS. The rule, however, expressly applies only to reactors fueled with the use of zircaloy-clad or ZIRLO-clad fuel pellets. In its topical report, FCF demonstrated that the ECCS acceptance criteria, which are applied to reactors fueled with zircaloy- or ZIRLO-clad fuel, are also applicable to reactors fueled with M5 fuel rod cladding and structural material. The staff has determined that this finding is applicable to Sequoyah because the fuel designs are consistent with the requirements of the topical report. Thus,

the performance of M5-clad material is similar to that of zircaloy- and ZIRLO-clad fuel and application of the regulation (*i.e.*, using zircaloy or ZIRLO) is not necessary to achieve the underlying purpose of 10 CFR 50.46.

The underlying purpose of 10 CFR 50.44 and 10 CFR Part 50, Appendix K, is to ensure that cladding oxidation and hydrogen generation are appropriately limited during a LOCA and conservatively accounted for in the ECCS evaluation model. These regulations set forth requirements for the plants that use either zircaloy- or ZIRLO-clad fuel. Specifically, Paragraph I.A.5 of 10 CFR Part 50, Appendix K, requires that the Baker-Just (B-J) equation be used in the ECCS evaluation model to determine the rate of energy release, cladding oxidation, and hydrogen generation. This equation conservatively bounds all post-LOCA scenarios. In the SE that approved Topical Report BAW-10227P, the NRC staff concluded that the B-J correlation is conservative for determining high temperature M5 oxidation for LOCA analysis, and that the correlation is acceptable for LOCA ECCS analysis up to the currently approved burnup levels. The staff has determined that this finding is applicable to Sequoyah because the fuel designs are consistent with the requirements of the topical report. Therefore, when M5 is used as fuel rod cladding and structural material, the B-J correlation conservatively bounds post-LOCA scenarios and ECCS evaluation model criteria will be met. Application of the rule (*i.e.*, the use of zircaloy or ZIRLO) is not necessary to achieve the underlying purpose of 10 CFR 50.44 and 10 CFR Part 50, Appendix K.

Based on this evaluation, the staff has determined that application of the criteria in 10 CFR 50.44 and 10 CFR Part 50, Appendix K, Paragraph I.A.5, is appropriate given the similarities in the performance of M5-clad fuel rods and zircaloy- and ZIRLO-clad fuel. Therefore, special circumstances exist to grant an exemption in that application of the regulations (*i.e.*, the use of zircaloy or ZIRLO) is not necessary to achieve the underlying purpose of the rules cited above.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR Part 50.12, an exemption is authorized by law and will not present an undue risk to the public health and safety and is consistent with the common defense and security. The Commission has determined that, pursuant to 10 CFR 50.12(a)(2)(ii), special circumstances are

present, as noted in Section III above. Therefore, an exemption is hereby granted from the requirements of 10 CFR 50.44, 10 CFR 50.46, and 10 CFR Part 50, Appendix K, to allow use of the M5 alloy.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (65 FR 20209).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 29th day of July 2000.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00-19902 Filed 8-4-00; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 23c-1, SEC File No. 270-253, OMB Control No. 3235-0260.

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 (the "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.

Rule 23c-1 under the Investment Company Act of 1940, among other things, permits a closed-end fund to repurchase its securities for cash if in addition to the other requirements set forth in the rule: (i) Payment of the purchase price is accompanied or preceded by a written confirmation of the purchase; (ii) the asset coverage per unit of the security to be purchased is disclosed to the seller or his agent; and (iii) if the security is a stock, the fund has, within the preceding six months, informed stockholders of its intention to purchase stock. The Commission staff estimates that approximately 19 closed-end funds rely on Rule 23c-1 annually to undertake approximately 115 repurchases of their securities. The Commission staff estimates that, on average, a fund spends approximately 2.5 hours on complying with the

paperwork requirements listed above each time it undertakes a security repurchase under the rule. The total annual burden of the rule's paperwork requirements thus is estimated to be 287.5 hours.

In addition, the fund must file with the Commission, during the calendar month following any month in which a purchase permitted by rule 23c-1 occurs, two copies of a report of purchases made during the month, together with a copy of any written solicitation to purchase securities given by or on behalf of the fund to 10 or more persons. The burden associated with filing Form N-23C-1, the form for this report, has been addressed in the submission for that form.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the 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: July 28, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-19905 Filed 8-4-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extensions: Rule 206(4)-3, SEC File No. 270-218, OMB Control No. 3235-0242, and

Rule 206(4)-4, SEC File No. 270-304, OMB Control No. 3235-0345.

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") has submitted to the Office of Management and Budget a request for extension of the previously approved collections of information discussed below.

Rule 206(4)-3, which is entitled "Cash Payments for Client Solicitations," provides restrictions on cash payments for client solicitations. The rule requires that an adviser pay all solicitors' fees pursuant to a written agreement. When an adviser will provide only impersonal advisory services to the prospective client, the rule imposes no disclosure requirements. When the solicitor is affiliated with the adviser and the adviser will provide individualized services, the solicitor must, at the time of the solicitation, indicate to prospective clients that he is affiliated with the adviser. When the solicitor is not affiliated with the adviser and the adviser will provide individualized services, the solicitor must, at the time of the solicitation, provide the prospective client with a copy of the adviser's brochure and a disclosure document containing information specified in rule 206(4)-3. The information rule 206(4)-3 requires is necessary to inform advisory clients about the nature of the solicitor's financial interest in the recommendation so they may consider the solicitor's potential bias, and to protect investors against solicitation activities being carried out in a manner inconsistent with the adviser's fiduciary duty to clients. Rule 206(4)-3 is applicable to all registered investment advisers. The Commission believes that approximately 1,588 of the advisers have cash referral fee arrangements. The rule requires approximately 7.04 burden hours per year per adviser and results in a total of approximately 11,180 total burden hours (7.04×1,588) for all advisers.

Rule 206(4)-4, which is entitled "Financial and Disciplinary Information that Investment Advisers Must Disclose to Clients," requires advisers to disclose certain financial and disciplinary information to clients. The disclosure requirements in rule 206(4)-4 are designed so that a client will have information about an adviser's financial condition and disciplinary events that may be material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients. We

estimate that approximately 1,118 advisers are subject to this rule. The rule requires approximately 7.5 burden hours per year per adviser and amounts to approximately 8,385 total burden hours (7.5×1,118) for all advisers.

The disclosure requirements of rules 206(4)-3 and 206(4)-4 are mandatory. Information subject to the disclosure requirements of rules 206(4)-3 and 206(4)-4 is not submitted to the Commission, so confidentiality is not an issue. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 31, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-19904 Filed 8-4-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extensions: Form F-80, SEC File No. 270-357, OMB Control No. 3235-0404, and Form 18, SEC File No. 270-105, OMB Control No. 3235-0121.

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") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Form F-80 is used by certain Canadian issuers to register securities to be issued in exchange offers or business combinations. All information provided on Form F-80 must be submitted to the Commission. The Commission uses very little of the collected information itself

except on an occasional basis in the enforcement of the securities laws. Form F-80 is required to be filed on occasion and is a public document. Form F-80 takes approximately 2 hours to prepare and is filed by 2 respondents for a total of 4 burden hours.

Form 18 is used for the registration of securities of any foreign government or political subdivision on a U.S. Exchange. All information provided on Form 18 must be submitted to the Commission. The Commission uses very little of the collected information itself except on an occasional basis in the enforcement of the securities laws. Form 18 is filed on occasion and is a public document. Form 18 takes approximately 8 hours to prepare and is filed by 5 respondents for a total of 40 burden hours.

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

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 1, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-19906 Filed 8-4-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24589; 812-12144]

Goldman Sachs Trust et al., Notice of Application

August 1, 2000.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of an application for an order under section 10(e)(3) of the Investment Company Act of 1940 ("Act") suspending the operation of section 10(b) of the Act.

Summary of Application: Applicants request an order extending, until August 31, 2000, the thirty-day period provided

for by section 10(e)(1) of the Act during which a vacancy on the boards of trustees ("Boards") of Goldman Sachs Trust ("GST") and Goldman Sachs Variable Insurance Trust ("GSVIT") may be filed by action of the Boards in order to bring the composition of the Boards into compliance with section 10(b) of the Act. Applicants further request that the order grant retroactive relief for the period from July 2, 2000, the expiration date of the statutory thirty-day period, to the date on which the order is issued.

Applicants: GST and GSVIT.

Filing Dates: The application was filed on June 30, 2000, and amended on July 28, 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 applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 24, 2000, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Applicants, 4900 Sears Tower, Chicago, IL 60606-6303.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, at (202) 942-0634, or Nadya B. Roytblat, Assistant Director, at (202) 942-0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549-0102 (telephone (202) 942-8090).

Applicants' Representations

1. GST and GSVIT (collectively, the "Trusts"), each a Delaware business trust, are open-end management investment companies comprised of multiple series and registered under the Act. GSVIT serves as an investment vehicle for separate accounts of participating insurance companies for the purpose of funding variable annuity contracts and variable life insurance policies ("Contracts"). Goldman Sach & Co. ("GSC") serves as principal

underwriter to the Trusts and is employed by the Trusts as a regular broker.

2. The Boards are identically organized with respect to the individual trustees. Prior to June 3, 2000, each Board was comprised of nine members, five of whom were not "interested persons," as defined in section 2(a)(19) of the Act, of GSC ("Disinterested Trustees"). Mr. Jackson Smart, a Disinterested Trustee, died on June 3, 2000, reducing each Board to eight members, four of whom are Disinterested Trustees. The Boards are seeking to identify a replacement Disinterested Trustee.

Applicants' Legal Analysis

1. Section 10(b) of the Act provides, in relevant part, that no registered investment company shall (1) employ as its regular broker any director, officer, or employee of such registered investment company, or any affiliated person of such director, officer or employee unless a majority of the board of directors of such registered investment company are not such brokers or affiliated persons of such brokers, (2) use as its principal underwriter any director, officer, or employee of such registered investment company or any person of which such director, officer or employee is an interested person unless a majority of the board of directors of such registered investment company are not such principal underwriters or interested persons of such principal underwriters, or (3) have as director, officer or employee any investment banker, or any affiliated person of any investment banker, unless a majority of the board of directors of such registered persons are persons who are not investment bankers or affiliated persons of any investment banker.

2. Section 10(e)(1) of the Act suspends the operation of Section 10(b) for a period of thirty days if action by the board of directors is required to fill a vacancy caused by the death, disqualification, or bona fide resignation of a director. Section 10(e)(3) authorizes the SEC, by order upon application, to prescribe a longer period as is not inconsistent with the protection of investors. Applicants request an order pursuant to section 10(e)(3) of the Act extending the thirty-day period provided for by section 10(e)(1) of the Act to August 31, 2000. Applicants further request that the order grant retroactive relief for the period from July 2, 2000, the expiration date of the statutory thirty-day period, to the date on which the order is issued. Applicants state that the requested relief meets the

standard in section 10(e)(3) for the reasons discussed below.

3. Applicants state that under section 10(b), in order for GSC to continue to serve as principal underwriter and regular broker for the Trusts, each Board's vacancy must be filled by a Disinterested Trustee. Applicants state further that the remaining Board members have determined that it was the prudent course to retain GSC as the principal underwriter and a regular broker and retain each of the other Board members past July 2, 2000, the date upon which the thirty-day period provided by section 10(b)(1) would expire.

4. Applicants state that it is in the best interests of the Trusts' shareholders and the Contracts' owners for the Board to take the necessary time to identify a qualified and competent Disinterested Trustee.

5. Applicants state that retroactive relief is necessary because Mr. Smart's death was unexpected, and that thirty days is not sufficient time to prepare and file with the Commission, and for the Commission to consider, issue a notice and grant an order upon, an application for exemptive relief.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Trusts will ensure that 50 percent of the Boards' members will be Disinterested Trustees until the earlier of August 31, 2000, or the Boards' approval of an additional Disinterested Trustee.

2. Any action taken by the Boards during the period covered by the requested order will be approved by at least a majority of each Board's Disinterested Trustees.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00-19907 Filed 8-4-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24588; 812-11870]

Securities Management and Research, Inc., et al.; Notice of Application

August 1, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under sections 6(c), 12(d)(1)(J),

and 17(b) of the Investment Company Act of 1940 (the "Act") for exemptions from sections 12(d)(1)(A) and (B) and 17(a) of the Act, and under section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions.

Summary of the Application: The requested order would permit certain registered management investment companies to invest uninvested cash in an affiliated money market fund in excess of the limits in sections 12(d)(1)(A) and (B) of the Act.

Applicants: Securities Management and Research, Inc. (the "Adviser"), SM&R Investments, Inc. (the "Series Fund"), and all existing and future series thereof, SM&R Growth Fund, Inc., SM&R Equity Income Fund, Inc., and SM&R Balanced Fund, Inc. (together with the Series Fund, the "Funds").

Filing Dates: The application was filed on December 2, 1999, and amended on April 14, 2000 and June 12, 2000.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving 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 August 28, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street NW, Washington, DC 20549-0609. Applicants, c/o Teresa E. Axelson, Securities Management and Research, Inc., 2450 Southshore Blvd., Suite 400, League City, TX 77573.

FOR FURTHER INFORMATION CONTACT: Paula L. Kashtan, Senior Counsel, at (202) 942-0615, 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 at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 (tel. 202-942-8090).

Applicants' Representations

1. The Funds, each a Maryland corporation, are registered under the Act as open-end management investment companies.¹ The Series Fund currently offers four series, including the SM&R Money Market Fund (the "Money Market Fund"). The Money Market Fund is subject to the requirements of rule 2a-7 under the Act. The Adviser, a Florida corporation and a wholly-owned subsidiary of American National Insurance Company, is registered as an investment adviser under the Investment Advisers Act of 1940.² The Adviser serves as the investment adviser for each of the Funds.

2. Applicants state that each of the Funds has, or may have, uninvested cash ("Uninvested Cash") held by its custodian. Such Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, strategic reserves, matured investments, proceeds from liquidation of investment securities, dividend payments, or money received from investors.

3. Applicants request an order to permit each of the Funds ("Investing Funds") to invest their Uninvested Cash in the Money Market Fund, and to permit the Money Market Fund to sell shares to, and to redeem shares from, the Investing Funds. Investment of Uninvested Cash in shares of the Money Market Fund will be made, only to the extent that such investment is consistent with each Investing Fund's investment restrictions and policies as set forth in its prospectus and statement of additional information. Applicants believe that the proposed transactions may reduce transaction costs, create more liquidity, increase returns, and diversify holdings.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides, in pertinent part, that no

¹ Applicants also request relief for all other registered management investment companies that are or become adviser or sub-advised by the Adviser and that are part of the same group of investment companies, as that term is defined in section 12(d)(1)(G) of the Act, as the Funds ("Future Funds" and together with the Funds, the "Funds"). All investment companies that currently intend to rely on the requested relief are named as applicants. Any other existing or future registered management investment company that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

² For purposes of this application, the term "Adviser" includes, in addition to Securities Management and Research, Inc., any other person controlling, controlled by or under common control with Securities Management and Research, Inc. that acts in the future as an investment adviser for the Funds.

registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act, in pertinent part, provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of section 12(d)(1) if, and to the extent that, such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) from the limitations of sections 12(d)(1)(A) and (B) to permit the Investing Funds to invest Uninvested Cash in the Money Market Fund.

3. Applicants state that the proposed arrangement would not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that because the Money Market Fund will maintain a highly liquid portfolio, an Investing Fund will not be a position to gain undue influence over the Money Market Fund. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because of the Money Market Fund sold to the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b-1 under the Act, or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers' ("NASD") Conduct Rules). Applicants represent that the Money Market Fund will not acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an "affiliated person" of an investment company to include, among others, any

person directly or indirectly controlling, controlled by, or under common control with the investment company and any investment adviser to the investment company. Applicants state that, because the Funds share a common investment adviser, each Fund may be deemed to be under common control with each of the other Funds, and thus an affiliated person of each of the other Funds. As a result, section 17(a) would prohibit the sale of the shares of the Money market Fund to the Investing Funds, and the redemption of the shares by the Money Market Fund.

5. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each investment company concerned, and the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the act permits the Commission to exempt persons or transactions from any provision of the act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that their request for relief to permit the purchase and redemption of shares of the Money Market Fund by the Investing Funds satisfies the standards in sections 6(c) and 17(b) of the Act. Applicants note that shares of the Money Market Fund will be purchased and redeemed at their net asset value, the same consideration paid and received for these shares by any other shareholder. Applicants state that the Investing Funds will retain their ability to invest their Uninvested Cash directly in money market instruments as authorized by their respective investment objectives and policies if they believe they can obtain a higher rate of return, or for any other reason. Applicants also state that the Money market Fund has the right to discontinue selling shares to any of the Investing Funds if the money Market Fund's board of directors determines that such sale would adversely affect its portfolio management or operations.

7. Section 17(d) of the Act and rule 17d-1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants state

that each Investing Fund, by purchasing shares of the Money Market Fund, the Adviser, by managing the assets of the Investing Funds investing in the Money Market Fund, and the Money Market Fund, by selling shares to the Investing Funds, could be deemed to be participants in a joint enterprise or arrangement within the meaning of section 17(d) of the Act and rule 17d-1 under the Act.

8. Rule 17d-1 permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d) of the Act. In determining whether to approve a transaction, the Commission is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the investment by the Investing Funds in shares of the Money Market Fund would be indistinguishable from any other shareholder account maintained by the Money Market Fund and that the transactions will be consistent with the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Shares of the Money Market Fund sold to and redeemed by the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b-1 under the Act or a service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules).

2. If the Adviser collects from the Money Market Fund a fee for acting as its investment adviser with respect to assets invested by the Investing Funds, before the next meeting of the board of directors of an Investing Fund that invests in the Money Market Fund ("Board") is held for the purpose of voting on an investment advisory contract under section 15 of the Act, the Adviser will provide the Board with specific information regarding the approximate cost to the Adviser for, or portion of the investment advisory fee under the existing advisory agreement attributable to, managing the assets of the Investing Fund that can be expected to be invested in the Money Market Fund. Before approving any investment advisory contract under section 15, the Board, including a majority of the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, shall consider to what extent, if any, the investment advisory fees charged to the Investing Fund by the

Adviser should be reduced to account for the investment advisory fees indirectly paid by the Investing Fund because of the investment advisory fee paid by the Money Market Fund to the Adviser. The minute books of the applicable Investing Fund will record fully the factors considered by the Board in approving the investment advisory contract, including the considerations of the Board relating to the advisory fees referred to above.

3. Each Investing Fund will invest Uninvested Cash in, and hold shares of, the Money Market Fund only to the extent that the Investing Fund's aggregate investment in the Money Market Fund does not exceed 25 percent of the total assets of the Investing Fund. For purposes of this limitation, each Investing Fund and series thereof will be treated as a separate investment company.

4. Investment in shares of the Money Market Fund will be in accordance with each Investing Fund's respective investment restrictions and policies as set forth in its prospectus and statement of additional information.

5. Each Investing Fund, the Money Market Fund, and any future Fund that may rely on the order will be advised by the Adviser, or a person controlling, controlled by, or under common control with the Adviser.

6. The Money Market Fund will not acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-19908 Filed 8-4-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of August 7, 2000.

An open meeting will be held on Thursday, August 10, 2000 at 10 a.m., in room 1C30.

The subject matter of the open meeting scheduled for Thursday, August 10, 2000 will be: The Commission will consider adopting new rules to address three issues: (1) The selective disclosure by issuers of

material nonpublic information (Regulation FD); (2) whether insider trading liability requires "use" or "knowing possession" of material nonpublic information (Rule 10b5-1); and (3) when a family or other non-business relationship gives rise to liability under the misappropriation theory of insider trading (Rule 10b5-2).

FOR FURTHER INFORMATION CONTACT: Richard A. Levine, Assistant General Counsel; or Sharon Zamore, Senior Counsel; or Jacob Lesser, Attorney, Office of the General Counsel (202-942-0890).

A closed meeting will be held on Thursday, August 10, 2000 at 11 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

The subject matters of the closed meeting scheduled Thursday, August 10, 2000 will be: Institution and settlement of injunctive actions; and institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: the Office of the Secretary at (202) 942-7070.

Dated: August 3, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00-20056 Filed 8-3-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43092; File No. SR-Amex-00-36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Creating an Options Principal Membership Seat Upgrade Program

July 31, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act")¹ and Rule 196-4 thereunder,² notice is hereby given that on June 30, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. 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 is proposing (i) to create an options principal membership seat upgrade program and (ii) to amend Article IV, Sections 1 (a)(1) and (b)(1) of the Exchange Constitution to increase the number of authorized regular memberships to accommodate the program. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

American Stock Exchange Constitution—Article IV

Admission to Membership

Number of Regular Memberships

SEC. 1(a)(1) Regular membership—There shall be *up to 864* [661] regular memberships in the Exchange[.], *inclusive of any regular memberships created through the options principal membership upgrade program*. The number of regular memberships shall be increased only if the Board of Governors requests The Amex Corporation to issue additional regular memberships. Any such issuance of additional regular memberships shall require the approval of a majority of the regular and options principal members voting together as a single class at a meeting called for the purpose of considering the request that new regular memberships be issued.

(2)–(3) No change.

Number of Options Principal Memberships

(b)(1) Options principal membership—There shall be 203 options principal memberships in the Exchange[.], *but this number shall be reduced by the number of options principal memberships upgraded to regular memberships*. The number of options principal memberships shall be increased only if the Board of Governors requests The Amex Corporation to issue additional options principal

memberships. Any such issuance of additional options principal memberships shall require the approval of a majority of the regular and options principal members voting together as a single class at a meeting called for the purpose of considering the request that additional options principal memberships be issued.

(2)–(5) No change.

* * * * *

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 Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex 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 recent increase in the number of securities listed on the Exchange, especially options and Exchange-traded funds, has led to a greater demand for specialists and brokers to handle the increased volume. Specialists and brokers are required to be regular members of the Exchange. Exchange members requested that the Exchange explore the feasibility of a voluntary Options Principal Membership ("OPM") Seat Upgrade Program ("Program"), with the potential for upgrading 203 options principal memberships into regular memberships. In response to that request, the Exchange proposed the Program as one approach to creating additional regular memberships. The effective date of the Program will be determined by the Exchange once it is approved by the Commission.

The one-time fee to upgrade an OPM membership to a regular membership under the proposed Program will be \$30,000 or \$36,000, depending on whether the OPM owner elects to participate in the Program within 120 days of the effective date of the Program.

OPM owners that elect to upgrade to a regular membership within 240 days would be entitled to pay on a monthly basis for 12 months. After 240 days from Program effectiveness, an OPM owner would be required to pay a lump sum payment of \$36,000 at the time of

election. New applications for the Program would not be accepted after 18 months from the Program's effective date. At the end of the 18 month period, the Program would terminate unless the Exchange elects to continue it.³ Fund proceeds, less administrative costs to the Exchange, would be distributed equally to regular seat owners of record at the time of distribution (excluding regular seat owners who upgraded their OPM seats).⁴ The final distribution would occur no later than the end of the 21st month from the Program's effective date, because fund proceeds could be payable through the 20th month from the effective date of the Program.⁵

All payments made to the Exchange by OPMs under the Program would be deposited into a fund created and managed by the Exchange for the purpose of collecting proceeds for subsequent distribution to regular members (excluding regular seat owners who updated their OPM seats) as described above. Interest on fund deposits would accrue to the regular members. Participants that elect to upgrade to a regular membership within 240 days would be billed by the Exchange on a monthly basis and would be subject to Exchange policy on billing matters. Program participants who are delinquent in their installment payments by more than sixty days would forfeit all payments made to date and their seats would revert to OPM status.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of paragraphs (b) and (c) Section 6 of the Act,⁶ in general, and furthers the objectives of Section

³ At that time, the Exchange could consider changing the terms of the Program, including raising the cost of upgrading an OPM seat. The Commission notes and the Exchange acknowledges that it would be required to file a proposed rule change with the Commission pursuant to Section 19(b) of the Act if it decides to extend or make any changes to the Program. Telephone call between Ivonne Lugo, Assistant General Counsel, Amex, and Sonia Patton, Attorney, Division of Market Regulation ("Division"), Commission, on July 13, 2000.

⁴ Within 21 months of the Program's effective date, the Exchange would distribute the proceeds received from OPM owners that elected to upgrade to regular memberships within 18 months, regardless of whether it decides to continue the Program. Telephone call between Ivonne Lugo, Assistant General Counsel, Amex, and Sonia Patton, Attorney, Division, Commission, on July 13, 2000.

⁵ For instance, an OPM owner that elects to participate in the Program on the 240th day would be entitled to make monthly payments for 12 months and would pay the last monthly installment the 20th month from the effective date of the Program.

⁶ 15 U.S.C. 78f(b) and (c).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

6(c)(4),⁷ in particular, in that it is designed to increase or to remove any limitation on the number of memberships in the Exchange or the number of members or designated representatives of members permitted to effect transactions on the floor of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference

Room. Copies of the filing will also be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR-Amex-00-36 and should be submitted by August 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-19910 Filed 8-4-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43099; File No. SR-CBOE-99-35]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2 and 3 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Facilitation Crosses of Index Options Orders

July 31, 2000.

1. Introduction

On June 29, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the Exchange's rule governing facilitation crosses as it applies to index option orders. Notice of the proposed rule change was published for comment in the **Federal Register** on August 20, 1999.³ The Commission received two comment letters regarding the proposal.⁴ On April 20, June 1, and July 18, 2000, the CBOE filed, respectively, Amendment Nos. 1, 2, and 3 to the proposal.⁵ This order approves the proposed rule change, as amended, and solicits comments from interested persons on Amendment Nos. 1, 2 and 3.

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 41742 (August 13, 1999), 64 FR 45578.

⁴ See Section III below.

⁵ The substantive modifications made by these amendments are incorporated in the description of the proposal in Section II below, and are further discussed in Section IV below.

II. Description of the Proposal

CBOE Rule 6.74(b) sets forth the procedures by which a floor broker representing the order of a member firm's public customer may cross it with a contra side order provided by the firm from its own proprietary account. In these circumstances, the firm is said to be "facilitating" the customer order, and the transaction is called a "facilitation cross."

Under the current version of the rule as applicable to index options,⁶ a floor broker seeking to execute a facilitation cross must first bring the transaction to the trading floor and request a market from the trading crowd. After receiving bids and offers from the crowd, the floor broker must propose a price at which to cross the order that improves upon the price provided by the crowd. However, before the floor broker can execute the cross, the market makers in the crowd are given the opportunity to take all or part of the transaction at the proposed price.

Under the current rule, if the crowd does not want to participate in the trade, the floor broker may proceed with the cross. If the crowd wants to take part of the order, however, the crowd has precedence and the floor broker may cross only that amount remaining after the crowd has taken its portion. If the crowd wants to take the entire order, the floor broker will not be able to cross any part of the order.

The proposed rule change would add new paragraph (e) to Rule 6.74, to apply to facilitation crosses in broad-based index options that are not traded in equity option crowds.⁷ The proposal would entitle the floor broker, under certain conditions, to cross a specified percentage of the customer order on behalf of the member firm before market makers in the crowd could participate in the transaction. The floor broker would be permitted to exercise this right even when he proposes the facilitation cross a price that matches, but does not improve upon, the best bid or offer

⁶ A related rule change recently approved by the Commission separately amended CBOE Rule 6.74 with respect to equity options. See Securities Exchange Act Release No. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000) (File No. SR-CBOE-99-10).

⁷ See Amendment No. 3, which specifies that the proposed rule change, originally described as applicable to index options, would apply only to broad-based index options not traded in equity option trading crowds. "Broad-based index" is defined in CBOE Rule 24.1(i). The CBOE represents that broad-based index options currently not traded at equity options posts on the Exchange include Standard & Poor's 100 Stock Index options ("OEX"), Standard & Poor's 500 Stock Index options ("SPX"), and options on the Dow Jones Industrial Average ("DJX").

⁷ 15 U.S.C. 78f(c)(4).

provided by the crowd in response to his initial request for a market.⁸

Under the proposal, all public customer orders in the book and those represented in the trading crowd at the time the market was established would first need to be satisfied.⁹ Afterward, the floor broker would be entitled to cross 20% of the remaining contracts with the facilitation order provided by the firm, which priority over members of the crowd.¹⁰

The proposed rule change would pertain only to orders of a certain minimum size determined by the appropriate Floor Procedure Committee of the Exchange on a class by class basis. That size could not be less than 50 contracts.¹¹

As under existing procedures in Rule 6.74(b), the floor broker seeking to execute a facilitation cross under proposed paragraph (e) would be required, when initially asking for a market in the option series, to make all persons in the trading crowd, including the Order Book Official, aware of his request.

Proposed paragraph (e)(i) provides, in addition, that once the trading crowd has provided a market, it would remain in effect until (a) a reasonable amount of time has passed; (b) a significant change has occurred in the price of the underlying security of the option; or (c) the market is improved. In case of dispute, "significant change" would be determined on a case-by-case basis by two Floor Officials, based upon the extent of recent trading in the option and the underlying security and any other relevant factor.¹²

In the case of a multi-part or spread order, one leg alone of the order would need to meet the eligible size requirement to qualify for the provisions of the proposed rule change. In addition, the facilitating firm would be required to disclose on the order ticket for the public customer order all terms of the order, including any contingency involving, and all related transactions in, either options or underlying or related securities. The floor broker would be required to disclose all

⁸ See Amendment No. 1, which extends the proposed guaranteed participation to the situation where the facilitation cross is proposed *at* the best bid or offer provided by the crowd.

⁹ See Amendment No. 2.

¹⁰ The same 20% participation would be guaranteed to the member firm whether the transaction takes place *at* or *between* the best bid or offer provided by the trading crowd in response to the floor broker's request for a market. See Amendment No. 1.

¹¹ See Amendment No. 1. The original proposal would have restricted the eligible order size to 500 contracts or more.

¹² See Amendment No. 1.

securities that are components of the public customer order before requesting bids and offers for the execution of all components of the order.¹³

If the same member firm of the Exchange is both the firm from which the customer order originated and the Designated Primary Market Maker ("DPM") for the class of options in which the transaction takes place, and the floor broker acting on behalf of the member firm takes advantage of the crossing right provided by the proposed rule change, the firm would not be entitled to any participation in the trade based on the guaranteed percentage ordinarily granted to DPMs.¹⁴

If the DPM in the options class is not the same member organization as the facilitating firm, and the trade takes place at the DPM's principal bid or offer, the DPM will be entitled to participate in a percentage of the contracts remaining after relevant public customer orders have been filled and the originating firm's crossing rights have been exercised. The percentage that the DPM will receive is determined by reference to the established DPM participation rate—subject to limitation. If the floor broker crosses the full 20% of the facilitating firm's entitlement, the number of contracts guaranteed to the DPM may not exceed 25% of the remainder of the order after the facilitating firm has taken its share.¹⁵ If the floor broker does not cross 20%, the DPM may be entitled to more, but in no case will the DPM be guaranteed a percentage that, when combined with the percentage crossed by the floor broker, exceeds 40% of the original order (after relevant public customer orders have been satisfied).¹⁶

The proposed rule change makes clear, however, that it is not intended to prohibit either a floor broker or DPM from trading more than their percentage entitlements if the other members of the

¹³ *Id.*

¹⁴ *Id.* The CBOE represents that none of the options classes covered by the proposed rule change currently is traded in a DPM trading crowd. However, the Exchange is including provisions in the proposed rule change concerning DPM participation guarantees because at some time in the future these options classes may be traded in DPM crowds. See Amendment No. 3.

¹⁵ See Amendment No. 3. Thus, if the original order was for 1,000 contracts, and the facilitating firm, crossing at the best bid or offer price given by the crowd, took its full share of 200 contracts (20%)—assuming no public customer order were represented in the book or in the crowd—the DPM would be entitled to 200 contracts (25% of the remaining 800) and the total combined participation guarantees of the facilitating firm and the DPM would be limited to 400 contracts, or 40% of the original order.

¹⁶ See Amendment No. 3.

trading crowd do not choose to trade with the remainder of the order.¹⁷

The proposed rule change also provides that the members of the crowd who establish the market in response to the floor broker's initial request would have priority over all other orders that were not represented in the crowd at the time the market was established, except for orders that improve upon those quotes. Further, a floor broker who holds a customer order and a facilitation order and who makes a request for a market would be deemed to be representing both the customer order and the facilitation order, so that the customer order and the facilitation order would also have priority over all other orders that were not being represented in the trading crowd at the time the market was established.¹⁸

III. Summary of Comments

The Commission received two comment letters regarding the proposed rule change, both from the Amex Options Markets Makers Association ("OMMA").¹⁹ The OMMA states that the proposed rule change would harm investors because the allocation of a fixed percentage of trades to member firms seeking to cross orders would reward the firms for trading at an unfair price. The association also argues that the proposal would create a disincentive for price improvement.

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the provisions of the Act applicable to a national securities exchange, particularly Sections 6(b)(5)²⁰ and 6(b)(8)²¹ of the Act, and the rules and regulations thereunder.²² The Commission believes that the proposal will enable the CBOE to better compete with other options exchanges in attracting the order flow or broker-

¹⁷ See Amendment Nos. 1 and 3.

¹⁸ See Amendment Nos. 1 and 2.

¹⁹ Letters from Daniel Mintz, Chairman, Amex Option Market Makers Association, to the Securities and Exchange Commission, dated August 31, 1999, and September 15, 1999.

²⁰ 15 U.S.C. 78f(b)(5). Section 6(b)(5) requires that the rules of a national securities exchange be designated to, among other things, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. It also requires that those rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

²¹ 15 U.S.C. 78f(b)(8). Section 6(b)(8) requires that the rules of the exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

²² In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

dealer firms seeking to facilitate customer orders, without adversely impacting the prices those orders receive.

The Commission finds that the CBOE's proposal to grant a 20% participation right, under certain conditions, to member firms seeking to execute facilitation crosses on the Exchange is reasonable. Currently, CBOE market makers have priority rights for the full size of a customer order over the firm that brings a crossing transaction to the CBOE floor.

The Commission does not find persuasive the OMMA's argument that the proposal would allow member firms to trade at an unfair price. A member firm could never execute a facilitation cross, under the proposal, at an inferior price. It would be required at least to match the best bid or offer provided by the crowd in response to the floor broker's request for a market in order to participate in the transaction at all.

While the proposal entitles the member firm to 20% of a facilitation transaction, it leaves 80% of the order to the trading crowd. The Commission believes that because 80% of an order would remain available to the market maker or market makers quoting the best price, the proposal raises no serious concern that price competition will be eroded on the Exchange.²³

The Commission finds good cause for approving Amendment Nos. 1, 2, and 3 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** pursuant to Section 19(b)(2) of the Act.²⁴ Amendment No. 1 adds the provision, described above, that would provide a participation guarantee to a member firm seeking to facilitate a customer order even when it only matches, but does not improve upon, the prices given by the crowd in response to the floor broker's initial request for a market. Amendment No. 1 also reduces the minimum size of orders to which the proposed rule change would be applicable, from 500 to 50 contracts.

The Commission has already approved rules of several options

²³ As the Commission recently stated, it is difficult to assess the precise level at which guarantees may begin to erode competitive market maker participation and potential price competition within a given market. However, for the immediate term, the Commission has approved participation guarantees of up to 40% of an order as not clearly inconsistent with the statutory standards of competition and free and open markets. See Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000). The proposed rule change, which would allocate only 20% of an order to the member firm, falls well within these parameters.

²⁴ 15 U.S.C. 78s(b)(2)

exchanges that establish participation guarantees of 20% or more for firms seeking to facilitate orders at the best prices offered by other market participants.²⁵ Similarly, the Commission has already approved rules of several options exchanges that provide such guarantees for order sizes with a minimum of 50 contracts.²⁶ Thus, these aspects of Amendment No. 1 raise no new regulatory issues.

Amendment No. 1, as supplemented and revised by Amendment No. 2, also include further clarifications of procedures and priority rights under the proposed rule change consistent with CBOE's facilitation cross rule for equity options. These provisions strengthen the proposed rule change and raise no new regulatory issues.

Amendment No. 3 specifies that the proposed rule change would apply only to broad-based index options that are not traded in equity trading crowds, clarifying the proposal's applicability and raising no new issues. Amendment No. 3 also includes the provision described above concerning DPM participation, which limits the total percentage of an order that may be guaranteed, to the originating firm and the DPM combined, to no more than 40%. This limitation accords with rules that the Commission has previously found consistent with the Act.²⁷

Accordingly, the Commission finds good cause, consistent with Sections 6(b)(5)²⁸ and 19(b)(2)²⁹ of the Act to accelerate approval of Amendments Nos. 1, 2, and 3 to the proposed rule change.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1, 2, and 3, including whether Amendment Nos. 1, 2, and 3 are consistent with the Act. Persons making written submissions should file six

²⁵ See Securities Exchange Act Release Nos. 42894 (June 2, 2000) (concerning File No. SR-Amex-99-36); 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000) (concerning File No. SR-CBOE-99-10, for equity options); 42848 (May 26, 2000) (concerning File No. SR-PCX-99-18); and 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (concerning registration of the International Securities Exchange ("ISE") as a national securities exchange, and, among other features of the exchange, the ISE's facilitation provisions).

²⁶ See Securities Exchange Act Release Nos. 42894 (June 2, 2000) (concerning File No. SR-Amex-99-36); 42835 (May 26, 2000) (concerning File No. SR-CBOE-99-10, for equity options); and 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (concerning ISE's facilitation provisions, among other features).

²⁷ See *surpa*, note 23.

²⁸ 15 U.S.C. 78f(b)(5).

²⁹ 15 U.S.C. 78s(b)(2).

copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-99-35 and should be submitted by August 28, 2000.

VI. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-CBOE-99-35), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁰

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-19911 Filed 8-4-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43102; File No. SR-NASD-99-76]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to the Code of Procedure and Other Provisions

August 1, 2000.

On December 28, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Regulations, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule

³⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

19b-4 thereunder.² NASD Regulation has proposed amendments to the NASD Code of Procedure and other provisions of the NASD Rules. The proposed rule change and Amendment No. 1³ to the proposal were published for comment in the **Federal Register** on May 10, 2000.⁴ The Commission received one comment letter on the proposal.⁵ This order approves the proposed rule change, as amended.

I. Description of the Proposal

NASD Regulation is proposing amendments to the NASD Code of Procedure (the "Code") and other provisions of the NASD Rules, that include: (1) Requiring members to designate, as the custodian of the record on the Form BDW, persons who are associated with the firm at the time the forms are filed; (2) clarifying the authority of Hearing Officers and making some limited changes to that authority; (3) clarifying the scope of the Association's document production requirements; (4) providing for Hearing Panel review of staff determinations to impose limitations on member firms' business activities because of financial and/or operational difficulties; (5) providing for changes to the process for appeals of disciplinary actions, statutory disqualification proceedings, and certain other accelerated proceedings; (6) providing for a streamline process to impose bars or expulsions for the failure to provide information to the Association; and (7) providing for a process by which the Association can more expeditiously cancel memberships of firms that fail to meet the Association's eligibility and qualification standards.

Custodian of the Record

The Association is proposing to establish NASD Rule 3121 that would require members to designate, as the custodians of the record on the Form BDW, persons who are associated with the firms at the time the forms are filed.

² 17 CFR 240.19b-4.

³ See Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated April 17, 2000 ("Amendment No. 1"). Amendment No. 1 made substantive changes to the proposed rule language, including the deletion of certain provisions in the 9300 Series, Review of Disciplinary Proceeding by National Adjudicatory Council and NASD Board; Application for Commission Review.

⁴ Securities Exchange Act Release No. 42751 (May 3, 1999), 65 FR 30163 (File No. SR-NASD-99-76).

⁵ See Letter from George Brunelle, Brunelle & Hadjikow, to Jonathan G. Katz, Secretary, Commission, dated May 25, 2000.

Eligibility of Panel Members

In certain circumstances, the National Adjudicatory Council (NAC) or the Review Subcommittee of the NAC (Review Subcommittee) may appoint panels to conduct hearings. Under NASD Rule 1015, only one panel member can be from the NAC, unless a panel member is also a former NASD Regulation Director of NASD Governor. The Association believes that this unnecessarily limits the pool of potential panelists. Accordingly, the Association is proposing to eliminate this restriction.

Investigations

The NASD Rule 8220 Series permits the Department of Enforcement to initiate proceedings to suspend or cancel membership from the Association or suspend the association of a person with a member based upon the failure to provide information. These proceedings may be initiated for the failure to provide information pursuant to an Association request or the failure to make required filings with the Association, such as FOCUS reports, or to keep membership applications or supporting documents current. Because the Rule 8220 Series proceedings are brought on an accelerated basis, the Association is proposing to amend the Rule 8220 Series to:

- (1) Limit the use of Rule 8220 Series proceedings to address the most serious on-going violations concerning associated persons and members who fail to provide the Association with requested information; and
- (2) Limit the sanctions available under Rule 8220 proceedings to suspensions.

Finally, the Association is proposing to amend the service provision under the Rule 8220 Series to make it consistent with the service provision under the Rule 9530 Series, a similar rule series. The Association is proposing that both the Rule 8220 Series and the Rule 9530 Series service provisions permit personal service, service by facsimile, and service by overnight courier. The Association is further proposing to clarify that attempted delivery of a document by an overnight courier constitutes service under these provisions.

Severance of Cases

The Association is proposing to amend NASD Rule 9214 to authorize the Chief Hearing Officer to sever disciplinary proceedings involving multiple respondents into two or more proceedings. The proposed rule also lists the factors the Chief Hearing

Officer must consider in determining whether to order severance.

Producing Documents

The Association is proposing amendments to NASD Rule 9253 to clarify the scope of the Association's document production requirements. NASD Rule 9251(a) requires the Association staff to make available to respondents documents prepared or obtained by the staff in connection with the investigations that led to the institution of a disciplinary proceeding. Exceptions to the production requirements are listed in NASD Rule 9251(b), and include examination and inspection reports and internal employee communications. Notwithstanding these exceptions, documents containing the staff's investigative techniques might become discoverable under Rule 9253, if staff members are called as witnesses during hearings. NASD Rule 9253 requires Association staff to produce written statements made or adopted by staff members, if they relate to the subject matter of those persons' testimony. It also requires the staff to produce contemporaneously recorded recitals of oral statements made by witnesses, if those written statements are substantially verbatim.

The proposed modifications of NASD Rule 9253 clarify that the only portions of routine examination or inspection reports, internal employee communications, and any other internal documents that are required to be produced, under this rule, are the portions outlining the substance of (and any conclusions regarding) oral statements made by persons who are not employees of the Association when evidence of those statements are offered by Association staff during disciplinary hearings.

Amending Complaints

The Association is proposing to modify its rules regarding amending complaints to more closely follow the Federal Rules of Civil Procedure ("FRCP"). The Association is proposing to eliminate the restriction in NASD Rule 9212 that amendments must be based on "new matters of fact or law." The Association is further proposing to modify NASD Rule 9212 to permit amendments to make complaints conform to the evidence presented, and to state that amendments to complaints will be freely granted when justice so requires. Association staff will still need to obtain Hearing Officer approval to amend complaints after answers have been filed.

Effective Dates of Sanctions

The Association is proposing to amend NASD Rules 9216, 9268, 9269, and 9360 to state that the effective dates of sanctions are the dates set by the Association staff, unless stated otherwise in orders, decisions, or settlement agreements. As a result of these changes, the Association believes that IM-8310-2 is no longer needed and, accordingly, is proposing to delete it. The NASD stated that this change will not affect its policy of automatically staying the imposition of the fines, disgorgement, and suspensions, pending review.

Summary Dispositions

The Association is proposing to modify NASD Rule 9264(a) to track the language in the FRCP, which permits parties to file a motion to eliminate issues that do not involve entire "causes of actions."

Further, the Association is proposing to modify NASD Rule 9264 to authorize Hearing Officers to deny, grant, or defer motions to dismiss without referring the matter to the full panel. The authority to grant such motions would be limited to jurisdictional issues, such as whether the complaint was filed within the two-year jurisdictional period. The Association believes that hearing Officers should be permitted to act on such motions, which generally involve technical legal questions, and do not require the input of industry representatives.

Default Decisions

The Association is proposing to modify NASD Rules 9269 to state that a motion to set aside a default decision should be made to the Hearing Officer that originally decided the motion for a default decision. If the Hearing Officer that issued the original order is not available, the Chief Hearing Officer shall appoint another Hearing Officer to decide the motion. Appeals from such denials could be made to the NAC or the Review Subcommittee.

Office of General Counsel—Requests for Additional Briefing

Under the NASD Rules 9311 and 9312, the General Counsel of NASD Regulation is required to obtain Review Subcommittee or NAC authorization to order parties to brief particular matters. The Association is proposing to eliminate this requirement because the Association believes that it is an unnecessary use of resources. However, the Association is proposing to include in the rules a process by which parties may challenge, before the Review Subcommittee or the NAC, requests for

additional briefing made by the General Counsel.

Procedures for Regulation of Activities of a Member Experiencing Financial or Operational Difficulties

Under the NASD Rule 9410 Series, the Department of Member Regulation issues notices and holds initial hearings to determine whether members must limit their business activities as a result of financial or operational difficulties. members can appeal Member Regulation's decisions to the NAC, and the NAC or the Review Subcommittee will appoint a Subcommittee to participate in the review. The Association is proposing to amend the rule series to provide that firms may appeal limitations issued by the Department of Member Regulation to Hearing Panels that will consist of a Hearing Officer and two other panelists. Under the proposal, the Department of Member Regulation would not hold hearings, and the NAC would not participate in appeals under this rule series.

Currently, under the NASD Rule 9410 Series, an NASD Governor may initiate the review of a decision issued by the NAC not later than the next meeting of the NASD Board that is at least 15 days after the date on which the NASD Board received the proposed written decision of the NAC. The Association is proposing instead to allow the Executive Committee of the NASD Board to initiate the review of the Hearing Panel decision for a period of 15 days. In addition, the Department of Member Regulation's decision is currently stayed unless otherwise ordered by the NAC. The Association is proposing to modify this provision to provide that the Department of Member Regulation's recommendation is stayed unless ordered otherwise by the Executive Committee.

Other Proceedings

Two categories of expedited proceedings available under the NASD Rule 9510 Series are referred to as "Summary Proceedings" and "Non-Summary Proceedings." The Association is proposing several amendments to the rules that govern the Code's Summary and Non-Summary Proceedings. The Association is proposing to add a provision to the NASD Rules 9500 series stating that the Hearing Officer shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth under Rule 9235.

NASD Rule 9514(a)(1) requires that requests for hearings be filed within 7 days of receipt of suspension letters (or,

with respect to notice of a pre-use filing requirement under Rule 2210(c)(4) and Rule 2220(c)(2), within 30 days of such notice). The Association is proposing to amend NASD Rule 9514(a)(2) to clarify that if the member or person subject to the notice does not timely request a hearing under Rule 9514(a)(1), the notice shall constitute final Association action.

NASD Rule 9514(d)(2) states that Non-Summary Proceedings held under the Rule 9500 Series need to be held within 21 days after respondent requests a hearing. Hearing Panels may, during the initial 21-day period, extend the time in which the hearings shall be held by additional 21-day periods. The Association believes that these periods are too short, and is proposing amending the rule to extend the initial period to 40 days, with an additional 30 days for a further extension.

A member, associated person, or other person who has been suspended or limited by a final action of the Association under the Rule 9510 Series may file a written request for reinstatement on the ground of full compliance with the conditions of the suspension or limitation. If the Association denies the request, the Association is proposing that the Review Subcommittee of the NAC, rather than the NASD Board, address an appeal from that denial, pursuant to NASD Rule 9516.

Eligibility Proceedings

The Association is proposing several changes to the NASD Rule 9520 Series that govern the process by which persons may become or remain associated with a member, notwithstanding the existence of a statutory disqualification or for a current member or person associated with a member to obtain relief from the eligibility or qualification requirements. First, the NASD Rule 9520 Series does not state whether extensions of time or waivers of time limitations for filing of papers or holding of hearings may be granted. The Association is proposing to create NASD Rule 9524(a)(5) that permits such actions by consent of all the parties. Further, the eligibility rules do not state whether the disqualification Hearing Panel or the NAC may order that the record be supplemented. The Association is proposing to create NASD Rule 9524(a)(3)(c) to permit the Hearing Panel to order the Parties to supplement the record with any additional evidence the Hearing Panel deems necessary.

Currently, NASD Rule 9524(b)(3) misstates that a decision by NAC becomes effective upon service to the disqualified member, sponsoring

member, or disqualified person. However, only the denials are effective upon service on applicants (subject to the applicant requesting a stay of effectiveness from the Commission). Under Rule 19h-1 under the Act, approval decisions are not effective until the Commission has either sent an acknowledgment letter to NASD Regulation (usually within 30 days, and the SEC can request a further 60-day extension of that period), or the Commission has entered an order in cases that have involved a previously-entered SEC bar (there is no time limitation for the entry of such an order). The Association is proposing to clarify NASD Rule 9524(b)(3) to accurately reflect the provisions of Rule 19h-1.

The Association is further proposing that Association Rule 9524(a)(1) be amended to state that members of the Statutory Disqualification Committee may also serve on Hearing Panels.

NASD Rule 9524(a)(3) states that if the Association staff initiates the proceedings, the Association will give to the applicant all documents that were relied on by the Association in issuing its notice. However, most applications are started by member firms, not the Association. The Association is proposing to amend this rule to reflect this fact.

The Association is also proposing to amend NASD Rule 9524(a)(3) to provide that once an application is filed, the CRD staff will gather all of the information necessary to process the application, including:

(1) CRD records for the disqualified member or person, sponsoring member, and the proposed supervisor; and

(a) All of the information submitted by the disqualified member or sponsoring member in support of the application.

Proposed NASD Rule 9524(a)(3) would further provide that the CRD staff will prepare an index of these documents, and simultaneously provide this index and copies of the documents to the disqualified member or sponsoring member, the Office of the General Counsel of NASD Regulation, and the Department of Member Regulation. The rule also would require the Department of Member Regulation to submit its recommendation and supporting documents to the Hearing Panel and the disqualified member or sponsoring member within 10 business days of the hearing, unless the parties otherwise agree. Similarly, the disqualified member or sponsoring member would be required to submit its documents to the Hearing Panel and the Department of Member Regulation with

10 business days of the hearing, unless otherwise agreed.

The NASD is also amending the Rule 9520 Series dealing with the review procedures used by Association staff in the case of certain disqualifying events. In particular, the Association is proposing to amend NASD Rule 9522(e) to permit members to submit a written request for relief (rather than an MC-400 application)⁶ in cases where the disqualified member or person is subject to an injunction that was entered 10 or more years prior to the proposed admission or association. Under Exchange Act Rule 19h-1,⁷ the NASD is not required to provide any notice to the Commission of the proposed admission or association in these types of cases. The Association also proposes that members be able to file a written request for relief in cases where a member requests to change the supervisor of a disqualified person or where, for instance, the New York Stock Exchange has determined to approve the proposed association of a disqualified person and the NASD concurs with the determination. Member Regulation would also be granted discretion to approve the written request for relief in these cases, if it deemed such action to be consistent with the public interest and the protection of investors.

The Association also proposes to amend the NASD Rule 9520 Series to permit Member Regulation to approve an MC-400 application for relief in those cases where the disqualifying event is excepted from the full notice requirements of Rule 19h-1, but where a short form notification to the Commission under Rule 19h-1 is still required. In these cases, the member would be required to file an MC-400, but Member Regulation would have the discretion to approve the application when consistent with the public interest and the protection of investors.

In addition, the Association is proposing new Rule 9523 to permit Member Regulation to recommend the membership or continued membership of a disqualified member or sponsoring member or the association or continuing association of a disqualified person pursuant to a supervisory plan. The procedures set forth in proposed NASD Rule 9523 are modeled on current Rule 9216 concerning Acceptance, Waiver, and Consent procedures, and are intended to avoid the requirement of a

formal hearing and decision by the Statutory Disqualification Committee (and its Hearing Panels) in cases that generally only involve the issue of what type of supervisory plan is appropriate for the disqualified member or person. Under proposed NASD Rule 9523, the member would be required to file an MC-400 application with the NASD. Member Regulation, however, would have the discretion to recommend the approval of the application in the event an appropriate supervisory plan is established. The member would be required to execute a letter consenting to the imposition of the supervisory plan. The letter and the supervisory plan would then be submitted to the Office of General Counsel or the Chairman of the Statutory Disqualification Committee for review and possible approval. While both the Office of General Counsel and the Committee Chairman would have authority to approve the application or refer it to the NAC, only the Committee Chairman would be permitted to reject the application.

Failure To Respond

As noted above (under the heading "Investigations"), the Association amended the proceedings initiated under the Rule 8220 Series to address the most serious on-going violations concerning associated persons and members that are failing to provide the Association with information. The Association is also proposing to create a new Rule 9540 Series that would apply to those who fail to provide the Association with information, required filings, or keep membership applications or supporting documents current.

Under the proposed NASD Rule 9540 Series, the Association would send notices information respondents that failure to provide the Association with previously requested information or required filings or the failure to keep its membership application or supporting documents current will result in suspensions, unless the information is provided to the Association within 20 days. Respondents would have five days to request a hearing to challenge a proposed suspension. These hearings would be conducted before three-member Hearing Panels, and the Hearing Panels would have the authority to order any fitting sanctions, including expulsions and bars. Respondents who fail to request a hearing to challenge the suspension during the six-month period following the receipt of a notice initiating proceedings under this rule series will be automatically barred or expelled.

⁶ A member firm is required to file an MC-400 application under NASD Eligibility Rules when the firm sponsors the association of a person subject to disqualification. Telephone conversation between Bradford Ali, Attorney, NASDR, and Anitra Cassas, Attorney, Commission, on July 19, 2000.

⁷ 17 CFR 240.19h-1.

Further, the Association is proposing to include in the proposed NASD Rule 9540 Series a process by which the Department of Member Regulation could quickly cancel the memberships of firms that fail to meet the Association's eligibility and qualification standards set forth in Article III of the Association's By-Laws. Under the proposal, the Association would send letters to members informing them that their memberships will be canceled within 20 days of receipt of the letters, unless the firm becomes eligible for continuance in membership within this time period. The members will be provided opportunities to request hearings within five days of service of the notices to challenge the proposed cancellations. The hearings would be held before Hearing Officers.

Miscellaneous Technical Revisions

1. Market Regulation's Role in Disciplinary Process

The Department of Market Regulation represents NASD Regulation under a delegation of authority from the Department of Enforcement, as stated in NASD Rule 9120(e). The Association is proposing amending the Code to clarify the Department of Market Regulation's role in the disciplinary process.

2. Service Of Papers—Address Changes

The Association is proposing to modify NASD Rule 9134(b)(1) to permit adjudicators to waive the requirement to send papers to CRD addresses when they are no longer valid, and there is a more current address available. This change would only relate to documents served on respondents after complaints have been served.

Further, the Association is proposing to amend NASD Rule 9135(a) to clarify that complaints shall be deemed timely filed so long as they are either mailed or delivered to the Office of Hearing Officers within the two-year jurisdictional period, as outlined in the By-Laws.

3. Remand Cases

The Association is proposing to amend NASD Rules 9344 and 9349 to clarify that the Review Subcommittee, in addition to NAC, may remand disciplinary cases to Hearing Panels.

4. Briefing Schedules

The Association is proposing to amend NASD Rule 9347(b) to clarify that the time periods listed in the rule are only applicable to the principle briefing schedule and not applicable to

the briefing of subsequent collateral issues.⁸

II. Comments and Responses

The Commission received one comment letter regarding the proposed rule change, which objected to the proposed amendments to NASD Rule 9253.⁹ The commenter contends that under proposed changes to NASD Rule 9253, when the SRO decides not to call a SRO staff member as a witness during a hearing, any exculpatory interviews the staff member conducted would become unavailable to the defense. The commenter stated that the effect of the proposed rule change would, therefore, allow SROs to deliberately conceal exculpatory evidence.

The NASD responded that under NASD Rule 9251(b)(2), the NASD Regulation staff may not withhold any material exculpatory evidence.¹⁰ Thus, the proposed changes would not change the Association's obligation to produce material exculpatory information. NASD Regulation continues to believe that the proposal is an appropriate and reasonable resolution of the issues.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the Act, and the rules and regulations thereunder applicable to a national securities association.¹¹ In particular, the Commission finds that the proposed rule change is consistent with the requirements of Sections 15A(b)(2), 15A(b)(6), 15A(b)(7), and 15A(b)(8) of the Act, as described below.¹² It also continues to preserve the independence of the regulatory staff of the NASD and the NASDR.¹³

Section 15A(b)(2) requires national securities associations to have the capacity to enforce compliance by their members and persons associated with members, with the provisions of the Act, the rules and regulations

thereunder, and the rules of the association.¹⁴ Several of the provisions of the proposed rule change modify the disciplinary procedures of the Association to enhance its membership oversight capabilities. For example, the Commission believes that proposed NASD Rule 3121, which requires members to designate associated persons as the custodians of record on the Form BDW, may enhance the Association's capacity to enforce compliance by allowing the Association to more easily obtain records from their members. Further, the clarification, simplification and consolidation of the procedures in the NASD Rule 8220 Series, 9410 Series, 9510 Series, and 9520 Series further the Association's ability to effectively and expeditiously conduct these disciplinary proceedings.

In addition, the creation of the 9540 series enhances the Association's capacity and authority to enforce its rules. This series creates a more streamlined disciplinary procedure for those members and associated persons who fail to provide the Association with certain information, and for those firms that fail to meet the Association's eligibility and qualification standards set forth in Article III of the Association's By-Laws.

The Commission further finds that the proposed rule change is consistent with Section 15A(b)(6), which provides, among other things, that the rules of the Association must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest.¹⁵ The creation of the NASD Rule 9540 Series, in particular, should enhance investor protection by allowing the Association to promptly cancel the membership of firms that fail to meet the Association's eligibility and qualification standards, such as a member firm that is not conducting a securities business.¹⁶ At the same time, members will have an opportunity for a hearing to challenge the Association's determinations.

Section 15A(b)(7) requires that members and persons associated with members be appropriately disciplined for violation of any provision of the Act, the rules and regulations thereunder, the rules of the Municipal Securities

⁸ The briefing schedule for any subsequent collateral issues is set by the Association staff on behalf of the Hearing Subcommittee. Telephone conversation between Shirley Weiss, Associate General Counsel, NASDR, and Anitra Cassas, Attorney, Commission, on July 19, 2000.

⁹ See *supra* note 5.

¹⁰ See Letter from Alden S. Adkins, General Counsel and Senior Vice President, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated June 28, 2000.

¹¹ In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78o-3(b)(2); 15 U.S.C. 78o-3(b)(6); 15 U.S.C. 78o-3(b)(7); and 15 U.S.C. 78o-3(b)(8).

¹³ See Commission's Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 37538 (August 8, 1996).

¹⁴ 15 U.S.C. 78o-3(b)(2).

¹⁵ 15 U.S.C. 78o(b)(6).

¹⁶ See Article II, Section 1(a) of the Association's By-Laws.

Rulemaking Board, or the rules of the association.¹⁷ The Commission finds that the revisions to the Rule 8220 Series, which address the procedure for initiating disciplinary proceedings against a member for failing to provide requested information, provide an appropriate mechanism for disciplining members. Similarly, the creation of the NASD 9540 Series also provides for the appropriate discipline of members who fail to provide the Association with certain information or who fail to meet the Association's eligibility and qualification standards.

The Commission also finds that the proposed rule change is consistent with Section 15A(b)(8) of the Act, which requires that the rules of the association provide a fair procedure for the disciplining of members and persons associated with members.¹⁸ For example, the provisions of the Rule 8220 Series have been revised to enhance the fairness of the disciplinary procedure. The Association has limited the use of the Rule 8220 proceedings to address only the most serious on-going violations, and has further limited the available sanctions to suspensions.

The Commission also finds that amendments to NASD Rule 9214, which authorizes the Chief Hearing Officer to sever disciplinary proceedings involving multiple respondents, are consistent with Section 15A(b)(8). In determining whether to order the severance, the Chief Hearing Officer must consider whether the same or similar evidence should be expected to be offered at each hearing, whether severance would conserve time and resources, and whether any party would suffer unfair prejudice. The Commission believes that this determination may result in a more timely and fair disciplinary procedure for all of the parties involved.

Proposed revisions to NASD Rule 9253 clarify that the only portions of routine examination or inspection reports, internal employee communications, and other internal documents that are required to be produced under the rule, are the portions outlining the substance of oral statements made by individuals who are not employees of the NASD when evidence of those statements are offered by NASD staff during disciplinary hearings.

One commenter expressed concern that the proposed changes to NASD Rule 9253 could make it more difficult for respondents to gain access to exculpatory information. However, the

Commission notes that, under 9251(b)(2), the Association may not withhold material exculpatory evidence. Thus, the amendments to NASD Rule 9253 do not relieve the Association of the obligation to produce material exculpatory information. The Commission believes that the revised scope of document production still provides a fair procedure for disciplining members.

The Commission further finds that revisions to NASD Rule 9212 regarding amending complaints are consistent with the requirements of Section 15A(b)(8). The Association may need to amend complaints for a number of reasons, including adding respondents. Thus, the Association proposed to eliminate permitting amendments only for "new matters of fact or law." The Commission believes that this should ensure a more fair procedure. The Commission notes, however, that the Association may only amend a complaint once as a matter of course, before a respondent answers to complaint. Thus, respondents will not be subject to unchecked delays caused by unlimited amendments.

The Commission believes that the amendments to NASD Rule 9264 may promote fairness of disciplinary procedures by expediting hearings. Permitting parties to move to summarily dispose of issues that do not involve entire "causes of actions," and authorizing Hearing Officers to grant motions on jurisdictional issues without referring the matter to the full panel, may allow the proceedings to conclude in a more timely manner.

Similarly, the amendments to NASD Rules 9311 and 9312 may allow for a quicker resolution of the issues. Under the proposal, the General Counsel of NASD Regulation will be able to order parties to brief particular matters, without obtaining Review Subcommittee or NAC authorization. However, the Commission notes that the proposal also includes a process for parties to challenge the General Counsel's request for additional briefing.

The Commission finds that amendments to NASD Rule 9260, which governs default decisions, are also consistent with Section 15A(b)(8). The Hearing Officers who issue the default decision have the most familiarity with the issues. Thus, allowing these Hearing Officers to decide a motion to set aside the default decision, rather than referring the matter to NAC, should provide a more prompt resolution of the motion.

The Association made several revisions to the NASD Rule 9510 Series,

which govern summary and non-summary proceedings. The amendments include: (1) A clarification that Hearing Officers have the same powers that they have in regular disciplinary proceedings (the Rule 9200 Series); (2) additional time to hold a hearing in non-summary proceedings; and (3) having appeals under NASD Rule 9516 be addressed by the Review Subcommittee of NAC rather than the NASD Board. The Commission believes that, consistent with Section 15A(b)(8), all of these amendments may promote more fair disciplinary proceedings. For example, the additional time for a hearing in non-summary proceedings should provide the Association and respondents with adequate time to prepare for hearings. The Commission notes that the additional time will not prejudice respondents because the suspension is not in effect during this time.

The Commission further finds that the proposed revisions to the NASD Rule 9520 series, which governs the process by which persons may become or remain associated with a member, and by which current members may obtain relief from the eligibility or qualification requirements, are consistent with Sections 15A(b)(8) and 19(d) of the Act. These revisions include: (1) Extending the time or waivers of time limitations for filing of papers or holding of hearings upon consent of all parties; (2) clarifying that the NASD's approval decisions are not effective until the Commission has either sent an acknowledgment letter to NASD Regulation or has entered an order in cases that involve a previously-entered SEC bar; (3) permitting members of the Statutory Disqualification Committee to serve on Hearing Panels; (4) providing that the CRD staff must gather all of the information necessary to process an application, that the CRD staff will prepare an index of these documents, and that the CRD will provide the index and copies of the documents to the various parties involved; (5) permitting members to submit a written request for relief, rather than an MC-400 application, in cases where the disqualified member is subject to an injunction that was entered 10 or more years prior to the proposed admission; and (6) permitting Member Regulation to recommend the membership or continuing membership of a disqualified member or sponsoring member, or association or continuing association of a disqualified person pursuant to a supervisory plan. The Commission believes that by simplifying and clarifying procedures for which persons may become or

¹⁷ 15 U.S.C. 78o(b)(7).

¹⁸ 15 U.S.C. 78o(b)(8).

remain associated with a member, and by which current members may obtain relief from the eligibility or qualification requirements, the Association is promoting fair disciplinary procedures.

Finally, the Commission finds that the amendments to the Code clarifying the NASD's Department of Market Regulation's role in the disciplinary process, the amendments to NASD Rule 9134(b) regarding service of papers on invalid addresses, the clarification to NASD Rules 9344 and 9340 regarding the ability of the Review Subcommittee to remand disciplinary cases to Hearing Panels, and the clarification to NASD Rule 9347(b) regarding briefing schedules are technical in nature, and, therefore, raise no new regulatory issues.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NASD-99-76), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00-19909 Filed 8-4-00; 8:45 am]

BILLING CODE 8010-01-M

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; New System of Records and New Routine Use Disclosures

AGENCY: Social Security Administration (SSA).

ACTION: New system of records and proposed new routine uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4)) and (e)(11)), we are issuing public notice of our intent to establish a new system of records entitled, the Social Security Administration's Talking and Listening to Customers (hereinafter referred to as TLC). The proposed TLC system will maintain information collected for use in connection with SSA's implementation of a process for capturing and addressing customer-initiated complaints, compliments, and suggestions.

The proposed new system of records will provide for routine use disclosures in connection with our administration of the Social Security Act, or as mandated by Federal law. We invite public comment on this proposal.

DATES: We filed a report of the proposed new system of records with the Chairman of the Senate Governmental Affairs Committee, the Chairman of the House Reform and Oversight Committee, the Director, Office of Information and Regulatory Affairs, and the Office of Management and Budget on July 24, 2000. The proposed system of records, including the proposed routine uses, will become effective on September 5, 2000, unless we receive comments that would warrant the system of records not being implemented.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, 3-A-6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Hazel Brodie, Social Insurance Policy Specialist, Social Security Administration, Room 3-C-3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (410) 965-1744.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Proposed TLC System

On September 11, 1993, President Clinton issued Executive Order (EO) 12862, "Setting Customer Service Standards." In part, EO 12862 states, "Putting people first means ensuring that the Federal government provides the highest quality service possible to the American people." Toward this end, the EO further specifically requires agencies to "make * * * complaint systems easily accessible" and "provide means to address customer complaints."

Talking and Listening to Customers (TLC) is the Social Security Administration's (SSA) answer to this Executive mandate. TLC is an agency-wide automated process that will enable SSA to capture, analyze, and address spontaneous customer complaints, compliments, and suggestions. Through TLC, we will document customers' input on a wide range of issues, including programs, policy, law, and service. This information will enhance SSA's ability to track and address individual customer concerns, as well as provide data to support the Agency's business planning, policy development, communication strategies, and operational and service improvements.

SSA will test the new TLC process and automated system in all regions, including the Office of Hearings and

Appeals (OHA) sites. Following the test period, we will evaluate the pilot based on customer and employee reaction as well as the automated system performance.

II. Collection, Maintenance, and Use of Data in the Proposed TLC System

We will obtain the information from our customers that will be maintained in the TLC automated system of records. The information will pertain to complaints, compliments, and suggestions our customers provide about Social Security programs, policies, laws, and service.

The information maintained in the TLC system will include (if given): Identifying information such as the customer's name, Social Security number (SSN), Employer Identification Number (EIN) and/or Claim Number, telephone number, address, and information relative to the content and disposition of their complaint, compliment, or suggestion.

If a third party provides the information, the TLC system will include data provided by the third party about the customer, such as the customer's name, SSN, EIN, and/or Claim Number, telephone number, addresses, and information relative to their complaint, compliment, or suggestion.

We will maintain and retrieve this information by our customer's SSN, EIN, and/or Claim Number, if given. Thus, the TLC system will constitute a system of records under the Privacy Act.

III. Proposed Routine Use Disclosures of Data That Will Be Maintained in the Proposed TLC System

We are proposing to establish routine uses of information that will be maintained in the proposed system as discussed below.

A. Disclosure to the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

We will disclose information under this routine use only in situations in which an individual may contact the Office of the President, seeking that office's assistance in a SSA matter on his or her behalf. Information would be disclosed when the Office of the President makes an inquiry and presents evidence that the office is acting on behalf of the individual whose record is requested.

B. Disclosure to a Congressional Office in response to an inquiry from that office made at the request of the subject of a record.

¹⁹ 17 CFR 200.30-3(a)(12).

We will disclose information under this routine use only in situations in which an individual may ask his or her congressional representative to intercede in a SSA matter on his or her behalf. Information would be disclosed when the congressional representative makes an inquiry and presents evidence that he or she is acting on behalf of the individual whose record is requested.

C. Disclosure to student volunteers and other workers, who do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable in SSA records in order to perform their assigned Agency functions.

Under certain Federal statutes, SSA is authorized to use the services of volunteers and participants in certain educational, training, employment and community service programs. Examples of such statutes and programs are: 5 U.S.C. 3111 regarding student volunteers, and 42 U.S.C. 2753 regarding the College Work-Study Program. We contemplate disclosing information under this routine use only when SSA uses the services of these individuals and they need access to information in this system to perform their assigned duties.

D. Disclosure to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of a function relating to this system of records.

We will disclose information under this routine use only in situations in which SSA may enter into a contractual agreement or similar agreement with a third party to assist in accomplishing an Agency function relating to this system of records.

E. Nontax return information which is not restricted from disclosure by Federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.

The Administrator of GSA and the Archivist of NARA are charged by 44 U.S.C. 2904 with promulgating standards, procedures, and guidelines regarding records management and conducting records management studies. Section 2906 of that law, also amended by the NARA Act of 1984, provides that GSA and NARA are to have access to Federal agencies' records and that agencies are to cooperate with GSA and NARA. In carrying out these responsibilities, it may be necessary for GSA and NARA to have access to this

proposed system of records. In such instances, the routine use will facilitate disclosure.

IV. Compatibility of Proposed Routine Uses

The Privacy Act (5 U.S.C. 552a(a)(7) and 552a(b)(3) and our disclosure regulations (20 CFR part 401) permit us to disclose information under a published routine use for a purpose which is compatible with the purpose for which we collected the information. Section 401.150(c) of the regulations permits us to disclose information under a routine use where necessary to assist in carrying out SSA programs. Section 401.120 of the regulations provides that we will disclose information when a law specifically requires the disclosure. The proposed routine uses lettered A–D will ensure the efficient administration of Social Security programs; the disclosures that would be made under routine use “E” are required by Federal law. Thus, all of the routine uses are appropriate and meet the relevant statutory and regulatory criteria.

V. Records Storage Medium and Safeguards for the Proposed TLC System

We will maintain information on the proposed TLC system in electronic form, in computer data systems, and in paper form. Only authorized SSA personnel who have a need for the information in the performance of their official duties will be permitted access.

Security measures include the use of access codes to enter the computer systems that will maintain the data, and storage of the computerized records in secured areas that are accessible only to employees who require the information in performing their official duties. Any manually maintained records will be kept in locked cabinets or in otherwise secure areas. Also, all entrances and exits to SSA buildings are patrolled by security guards. Contractor personnel having access to data in the proposed systems of records will be required to adhere to SSA rules concerning safeguards, access, and use of the data. SSA personnel having access to the data on these systems will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in these systems. See 5 U.S.C. § 552a(i)(1).

VI. Effect of the Proposed TLC System of the Rights of Individuals

The proposed TLC system will maintain information that we will use to document and categorize customer input along various program, policy,

and service lines, and to identify those areas of greatest interest and concern to our customers. This will allow us to target those concerns for additional research, thereby improving the quality of the service we provide. We will not use the information in any manner that will be adverse to the individuals to whom it pertains. Thus, we do not anticipate that the TLC system will have any unwarranted adverse effect on individuals.

Dated: July 24, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

60–0276

SYSTEM NAME:

Social Security Administration's (SSA) Talking and Listening to Customers (TLC).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Customer Service Integration, Room 938 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any SSA customer (individual or entity who is directly served by a department or agency), which includes the general public and Social Security claimants/beneficiaries who provide feedback via complaints, compliments, or suggestions to SSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

The information maintained in this system of records includes identifying information such as the customer's name, Social Security number (SSN), Employer Identification Number (EIN) and/or Claim Number, telephone number, and address, if given by the individual. Also, information concerning the content and disposition of customers' compliments, complaints, or suggestions will be maintained in the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12862, “Setting Customer Service Standards.”

PURPOSE(S):

The TLC system will capture information our customers provide concerning complaints, compliments and/or suggestions about SSA programs, policy, laws, and service. We will use data from the TLC system to support SSA's business planning, policy development, communication strategies, and operational and service enhancements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. Disclosure to the Office of the President for the purpose of responding to an individual pursuant to an inquiry from that office made at the request of the subject of a record.
2. Disclosure to a Congressional Office in response to an inquiry from that office made at the request of the subject of a record.
3. Disclosure to student volunteers and other workers, who do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.
4. Disclosure to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of a function relating to this system of records.
5. Nontax return information which is not restricted from disclosure by Federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data are stored in electronic and paper form.

RETRIEVABILITY:

Records in this system are indexed and retrieved by Name, SSN, EIN and/or Claim Number.

SAFEGUARDS:

Security measures include the use of access codes to enter the database and the storage of the electronic records in secured areas which are accessible only to employees who require the information in performing their official duties. The paper records that result from the electronic site are kept in locked cabinets or in otherwise secure areas. SSA contractor personnel having access to data in the system of records are required to adhere to SSA rules concerning safeguards, access, and use of the data. They also are informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in this system of records.

RETENTION AND DISPOSAL:

The TLC tracking and management information maintained in this system are retained indefinitely or until it is determined that they are no longer needed. Means of disposal is appropriate to storage medium (e.g., deletion of individual records from the electronic site when appropriate, or shredding of paper records, etc.).

SYSTEM MANAGER(S) AND ADDRESS:

Social Security Administration, Office of Systems, Office of Information Management, Room 3420 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record about him/her by writing to the Systems Manager at the above address and providing his/her SSN, EIN and/or Claim Number, or other information that may be in the system of records that will identify him/her. An individual requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license or some other means of identification, such as a voter registration card, credit card, etc. If an individual does not have any identification document sufficient to establish his/her identity, the individual must certify in writing that he/she is the person he/she claims to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

If notification is requested by telephone, an individual must verify his/her identity by providing identifying information that is contained in the record to which notification is being requested. If we determine that the identifying information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person. If an individual is requesting information on behalf of another individual and has the consent of subject individual, he/she must be able to provide his/her name, SSN, address, date of birth, and place of birth, along with one other piece of information such as mother's maiden name.

If a request for notification is submitted by mail, an individual must include a notarized statement to SSA to verify his/her identity or must certify in the request that he/she is the person he/she claims to be and that he/she understands that the knowing and

willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

These procedures are in accordance with SSA Regulations 20 CFR 401.45 and 401.50.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. These procedures are in accordance with SSA Regulations 20 CFR 401.40 to 401.50.

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting, state the corrective action sought, and the reasons for the correction with supporting justification showing how the record is untimely, incomplete, inaccurate, or irrelevant. These procedures are in accordance with SSA Regulations 20 CFR 401.65.

RECORD SOURCE CATEGORIES:

Data for the system are obtained primarily from the individuals to whom the record pertains.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. 00-19619 Filed 8-4-00; 8:45 am]

BILLING CODE 4190-29-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2000-7671]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115-0056, 2115-0092, and 2115-0540

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of three Information Collection Requests (ICRs). They comprise Various International Agreement Safety Certificates and Documents, Barge Fleet Facility Records, and Ports and Waterways Safety—Title 33 CFR Subchapter P. Before submitting the ICRs to OMB, the Coast Guard is seeking comments on the collections described below.

DATES: Comments must reach the Coast Guard on or before October 6, 2000.

ADDRESSES: You may mail comments to the Docket Management System (DMS) [USCG 2000-7671], U.S. Department of Transportation (DOT), room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001, or deliver them to room PL-401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

The DMS maintains the public docket for this request. Comments will become part of this docket and will be available for inspection or copying in room PL-401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at <http://dms.dot.gov>.

Copies of the complete ICRs are available through this docket on the Internet at <http://dms.dot.gov> and also from Commandant (G-SII-2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593-0001. The telephone number is 202-267-2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202-267-2326, for questions on this document; Dorothy Walker, Chief, Documentary Services Division, U.S. Department of Transportation, 202-366-9330, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2000-7671], and give the reason for the comments. Please submit all comments and attachments 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 stamped, self-addressed postcards or envelopes.

Information Collection Request

1. *Title:* Various International Agreement Safety Certificates and Documents.

OMB Control Number: 2115-0056.

Summary: These 11 forms are due to the adoption of the International Convention for Safety of Life at Sea, 1974 (SOLAS). The 11 forms are evidence of compliance with this convention for U.S. vessels on international voyages. Without the proper forms, U.S. vessels could be detained in foreign ports.

Need: By Executive Order 12234, the Coast Guard is responsible for the issuance of certificates as required by SOLAS 1974. SOLAS applies to all mechanically propelled cargo vessels of 500 or more gross tons (GT), and to all mechanically propelled passenger vessels carrying more than 12 passengers that engage in international voyages. The Coast Guard will issue certificates after performing inspections or safety-management audits of the vessels' systems and determining that the vessels meet the applicable requirements. SOLAS and 46 CFR 2.01-25 list certificates and documents that the Coast Guard may issue to vessels.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Burden: The estimated burden is 38 hours a year.

2. *Title:* Barge Fleet Facility Records.

OMB Control Number: 2115-0092.

Summary: This collection of information requires the person in charge of a barge-fleeting facility to keep records of twice-daily inspections of barges' moorings and movements, and of movements of hazardous cargo in and out of the facility.

Need: The requirements of 33 CFR 165.803 aim at preventing barges from breaking away from fleeting facilities and drifting downstream out of control in the congested Lower Mississippi River.

Respondents: Operators of fleets of barges.

Frequency: On occasion.

Burden: The estimated burden is 30,618 hours a year.

3. *Title:* Ports and Waterways Safety—Title 33 CFR Subchapter P.

OMB Control Number: 2115-0540.

Summary: This collection of information allows the master, owner, or agent of a vessel affected by this rule to request deviation from the requirements governing navigation-safety equipment to the extent that there is no reduction in safety.

Need: 33 CFR Subchapter P allows any person directly affected by this rule to request a deviation from any of the requirements as long as it does not compromise safety. This collection enables the Coast Guard to evaluate the information the respondent supplies, to determine whether it justifies the request for deviation.

Respondents: Master, owner, or agent of a vessel.

Frequency: On occasion.

Burden: The estimated burden is 2,924 hours a year.

Dated: July 25 2000.

Daniel F. Sheehan,

Director of Information and Technology.

[FR Doc. 00-19919 Filed 8-4-00; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-2000-34]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 6, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT:

Cherie Jack (202) 267-7271, Forest Rawls (202) 267-8033, or Vanessa Wilkins (202) 267-8029 Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of

Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on August 2, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 30034.

Petitioner: Coalition of Airline Pilots Association.

Section of the FAR Affected: 14 CFR § 61.23(c)(1)(i).

Description of Relief Sought: To extend the duration of a first class medical certificate from 6 months to 1 year for CAPA-member union pilots exercising the privileges of an airline transport pilot certification.

[FR Doc. 00-19932 Filed 8-4-00; 8:45 am]

BILLING CODE 4910-B-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-2000-35]

RIN

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and dispositions of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 28, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT:

Cherie Jack (202) 267-7271, Forest Rawls (202) 267-8033, or Vanessa Wilkins (202) 267-8029 Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 2, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 28419.

Petitioner: United Parcel Service.

Section of the FAR Affected: 14 CFR 121.433(c)(1)(iii), 121.440(c), 121.441(a)(1) and (b)(1), and appendix F to part 121.

Description of Relief Sought/Disposition: To permit UPS to combine recurrent flight and ground training and proficiency checks for UPS's pilots in command (PIC), seconds in command (SIC), and flight engineers (FE) in a single annual training and proficiency evaluation program (SVTP).

Grant, 04/06/00, Exemption No. 6434B

Docket No.: 29483.

Petitioner: Jackson Police Department.

Section of the FAR Affected: 14 CFR 61.195(g)(1) and 91.109(a).

Description of Relief Sought/Disposition: To permit Jackson PD pilots in training to use public aircraft to log the aeronautical experience required by § 61.39 to take the practical test for issuance of a pilot certificate and aircraft rating.

Denial, 02/28/00, Exemption No. 7133

Docket No.: 29867.

Petitioner: Jetstream Aviation.

Section of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/Disposition: To permit Jetstream to operate its Cessna Model 310N (Registration No. N4165Q, Serial No. 310N-0065) and Piper PA-28 Cherokee 140 (Registration No. N657CA, Serial No. 28-22371) airplanes under part 135 without a TSO-C112 (Mode S) transponder installed on each airplane.

Grant, 03/01/00, Exemption No. 7134

Docket No.: 29836.

Petitioner: Southwest Airlines Co.

Section of the FAR Affected: 14 CFR 121.434(c)(1)(ii).

Description of Relief Sought/Disposition: To permit Southwest to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying PIC who is completing initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing.

Grant, 02/28/00, Exemption No. 7132

Docket No.: 29736.

Petitioner: Tulsa Air & Space Center Airshows, Inc.

Section of the FAR Affected: 14 CFR 91.315, 119.5(g), and 119.21(a).

Description of Relief Sought/Disposition: To permit Tulsa Air & Space to operate its former military North America B-25 airplane (B-25), which is certificated in the limited category, for the purpose of carrying passengers on local flights for compensation or hire.

Grant, 02/18/00, Exemption No. 7126

[FR Doc. 00-19933 Filed 8-13-00; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-2000-36]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 28, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. _____, 800 Independence Avenue, SW, Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267-7271, Forest Rawls (202) 267-8033, or Vanessa Wilkins (202) 267-8029 Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on August 2, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 24237.

Petitioner: Department of the Air Force.

Section of the FAR Affected: 14 CFR 91.777(a)(2) and 91.179(b)(1).

Description of Relief Sought/Disposition: To permit the Air Force to conduct low-level operations without complying with en route minimum altitudes for flight under instrument flight rules (IFR) or direction of flight requirements for IFR en route segments in uncontrolled airspace.

Grant, 07/21/00, Exemption No. 4371E

Docket No.: 29974.

Petitioner: Mr. Joseph E. Fisher.

Section of the FAR Affected: 14 CFR 121.154 and 135.91.

Description of Relief Sought/Disposition: To permit the operator of an aircraft to allow you to furnish, carry, and operate certain oxygen storage, generating, and dispensing equipment for your medical use onboard the aircraft on which you are traveling.

Denial, 07/25/00, Exemption No. 7285

Docket No.: 21882.

Petitioner: China Airlines, Ltd.

Section of the FAR Affected: 14 CFR 61.77(a) and (b), and 63.23(a) and (b).

Description of Relief Sought/Disposition: To permit CAL airmen who operate two U.S.-registered Boeing 747-SP aircraft (Registration Nos. N4508H and N4522V) and three U.S.-registered Airbus A300-600R aircraft (Registration Nos. N88881, N88887, and N8888B) that are leased to a person who is not a citizen of the United States, for carrying persons or property for compensation or hire, to be eligible for special purpose airmen certificates.

Grant, 07/25/00, Exemption No. 4849H

Docket No.: 29648.

Petitioner: Aircraft Owners and Pilots Association.

Section of the FAR Affected: 14 CFR 135.21, 135.255, 135.353, and appendixes I and J to part 121

Description of Relief Sought/Disposition: To permit the AOPA member-pilots to conduct local sightseeing flights at charity or community events, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 07/26/00, Exemption No. 7112A

Docket No.: 30068.

Petitioner: Douglas County AIDS Project.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121

Description of Relief Sought/Disposition: To permit DCAP to conduct local sightseeing flights in the vicinity of Lawrence, Kansas, for its one-day charitable event in August 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 07/20/00, Exemption No. 7278

Docket No.: 29715.

Petitioner: East Hill Flying Club.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121

Description of Relief Sought/Disposition: To permit East Hill to conduct local sightseeing flights at Tompkins County Airport for three one-day pancake breakfasts, one each in August 2000, September 2000, and May 2001, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 07/20/00, Exemption No. 7279

Docket No.: 30018.

Petitioner: Mr. William Scholberg.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121

Description of Relief Sought/Disposition: To permit Mr. William Scholberg to conduct four local sightseeing flights, donated to the Saints Martha and Mary Episcopal Church's silent auction, at an airport in the vicinity to Apple Valley, MN, for compensation on hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 07/21/00, Exemption No. 7213A

Docket No.: 29271.

Petitioner: Mr. Kerrick R. Philleo.

Section of the FAR Affected: 14 CFR 91.109(a).

Description of Relief Sought/Disposition: To permit Mr. Kerrick R. Philleo to conduct certain flight instruction to meet recent experience requirements in Beechcraft Bonanza and Beechcraft Debonair airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.

Grant, 07/18/00, Exemption No. 6804A

Docket No.: 28723.

Petitioner: Ryan International Airlines, Inc.

Section of the FAR Affected: 14 CFR 91.203 (a) and (b).

Description of Relief Sought/Disposition: To permit Ryan to operate temporarily its U.S.-registered aircraft following the incidental loss of mutilation of that aircraft's airworthiness certificate or registration certificate, or both.

Grant, 07/18/00, Exemption No. 6571B

[FR Doc. 00-19934 Filed 8-4-00; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-2000-37]

Petitions for Exemption; Summary of petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I),

dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 28, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267-7271, Forest Rawls (202) 267-8033, or Vanessa Wilkins (202) 267-8029 Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Dated: Issued in Washington, DC, on August 2, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 29385.

Petitioner: Charity Airlift Incorporated.

Section of the FAR Affected: 14 CFR 125.1(b)(2).

Description of Relief Sought/Disposition: To permit Charity Airlift to conduct noncommon carriage operations using a restricted-category Lockheed C-130 Hercules (C-130) aircraft carrying persons and/or cargo for compensation or hire under the provisions of part 125.

Denial, 07/31/00, Exemption No. 7280

Docket No.: 30055.

Petitioner: High Adventure Air Charters.

Section of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/Disposition: To permit High Adventure

to operate certain aircraft under part 135 without a TSO-C112 (Mode S) transponder installed in the aircraft.

Grant, 07/31/00, Exemption No. 7288

Docket No.: 29998.

Petitioner: Air Jet, Inc.

Section of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/

Disposition: To permit Air Jet to operate certain aircraft under part 135 without a TSO-C112 (mode S) transponder installed in the aircraft.

Grant, 07/31/00, Exemption No. 7290

Docket No.: 30079.

Petitioner: Airway Flight Services, Inc.

Section of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/

Disposition: To permit AFSI to operate certain aircraft under part 135 without a TSO-C112 (Mode S) transponder installed in the aircraft.

Grant, 07/31/00, Exemption No. 7287

Docket No.: 30083.

Petitioner: St. Charles Flying Service, Inc.

Section of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/

Disposition: To permit St. Charles to operate certain aircraft under part 135 without a TSO-C112 (Mode S) transponder installed in the aircraft.

Grant, 07/31/00, Exemption No. 7289

Docket No.: 30123.

Petitioner: Condor Aero Club.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.

Description of Relief Sought/

Disposition: To permit CAC to conduct local sightseeing flights at Zelenople Municipal Airport, Zelenople, Pennsylvania, for the one-day Zelenople Horse Trading Days event in July 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 07/21/00, Exemption No. 7281

Docket No.: 29182.

Petitioner: Continental Express.

Section of the FAR Affected: 14 CFR 121.434(c)(1)(ii).

Description of Relief Sought/

Disposition: To permit Continental to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying pilot in command (PIC) while that PIC is performing prescribed duties during at least one flight leg that includes a

takeoff and a landing when completing initial or upgrade training as specified in § 121.424.

Grant, 07/27/00, Exemption No. 6798A

[FR Doc. 00-19935 Filed 8-4-00; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-98-4548; Notice 2]

Denial of Petition for Import Eligibility Decision

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under 49 U.S.C. § 30141(a)(1)(A). The petition, which was submitted by G&K Automotive Conversion, Inc. of Santa Ana, California ("G&K"), a registered importer of motor vehicles, requested NHTSA to decide that certain 1989-1991 Volkswagen Golf 4-Door Sedans that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States. In the petition, G&K contended that these vehicles are eligible for importation on the basis that (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S. certified version of the 1989-1991 Volkswagen Golf 4-Door Sedan), and (2) they are capable of being readily altered to conform to the standards.

NHTSA published a notice in the **Federal Register** on October 26, 1998 (63 FR 57158) that contained a thorough description of the petition, and solicited public comments upon it. One comment was received in response to the notice, from Volkswagen of America, Inc. ("Volkswagen"), the United States representative of Volkswagen AG, the vehicle's manufacturer. In this comment, Volkswagen contended that the vehicles that are the subject of the petition are four-wheel drive vehicles which are not substantially similar to the Golf 4-Door Sedan with four-wheel drive that was originally manufactured and certified for sale in the United States and that these vehicles are not capable of being readily altered to conform to the standards. Specifically, Volkswagen observed that the non-U.S. certified 1989-1991 Volkswagen Golf 4-Door Sedans with four-wheel drive that

are the subject of the petition are heavier than the heaviest Golf model certified for sale in the United States, have a different four wheel drive configuration, and approximately 100mm of additional ground clearance. As a consequence, Volkswagen asserted that crash testing would be required to assure that the non-U.S. certified 1989–1991 Volkswagen Golf 4-Door Sedans comply with Federal Motor Vehicle Safety Standard Nos. 203, *Impact Protection for the Driver from the Steering Control System*, 204 *Steering Control Rearward Displacement*, 208 *Occupant Crash Protection*, 212 *Windshield Mounting*, 219 *Windshield Zone Intrusion*, and 301 *Fuel System Integrity*.

Additionally, Volkswagen contended that the 1989–1991 Volkswagen Golf 4-Door Sedans produced in Germany for the European market would not comply with the Bumper Standard found at 49 CFR Part 581 because those vehicles have greater ground clearance than their U.S.-certified counterparts, and are equipped with front bumper mounted “bull bars” not found on U.S.-certified models. Volkswagen asserted that these features would affect the vehicles’ bumper and crash test performance.

Volkswagen also observed that 1989–1991 Volkswagen Golf 4-Door Sedans produced in Germany for the European market are equipped with headlamps and signaling lamps that would not comply with Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment*, and would also require modification, including the installation of a center high mounted stop lamp, to comply with that standard.

Volkswagen further stated that a passive shoulder belt system would have to be installed on the non-U.S. certified 1989–1991 Volkswagen Golf 4-Door Sedans to comply with Standard No. 208 *Occupant Crash Protection*. Volkswagen noted that the installation of such a system would require the attachment of anchorages in the tunnel area and on the front door and the attachment and welding of reinforcements to the B-pillar. Volkswagen also noted that a knee bar would have to be installed on the instrument panel for compliance with the passive restraint crash test requirements.

Volkswagen also asserted that the non-U.S. certified 1989–1991 Volkswagen Golf 4-Door Sedans would not comply with Standard No. 212 *Windshield Mounting* because only clips were used for mounting the windshield on these vehicles, as opposed to the adhesive bonding method that was employed in the U.S.

certified versions. Volkswagen further observed that the non-U.S. certified 1989–1991 Volkswagen Golf 4-Door Sedans did not have the door beam structure that is necessary for compliance with Standard No. 214. Additionally, Volkswagen stated that the vehicles were manufactured with some foam seat parts that were not treated with flame resistant agents to comply with Standard No. 302.

G&K did not respond to Volkswagen’s comments even though NHTSA accorded it an opportunity to do so. In light of the issues that Volkswagen has raised regarding the lack of substantial similarity between non-U.S. certified 1989–1991 Volkswagen Golf 4-Door Sedans and the U.S.-certified versions of those vehicles, NHTSA has concluded that the petitioner has failed to demonstrate that non-U.S. certified 1989–1991 Volkswagen Golf 4-Door Sedans are (1) substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115 and (2) are capable of being readily altered to comply with all applicable Federal motor vehicle safety standards. The petition must therefore be denied under 49 CFR 593.7(e).

In accordance with 49 U.S.C. § 30141(b)(1), NHTSA will not consider a new import eligibility petition covering these vehicles until at least three months from the date of this notice.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.7; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 2, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 00–19921 Filed 8–4–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–7710]

Notice of Receipt of Petition for Decision That Nonconforming 2001 Porsche 911 Turbo Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2001 Porsche 911 Turbo passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic

Safety Administration (NHTSA) of a petition for a decision that 2001 Porsche 911 Turbo passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) They are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is September 6, 2000.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies of Baltimore, Maryland (“J.K.”) (Registered Importer 90–006) has petitioned NHTSA to decide whether 2001 Porsche 911 Turbo passenger cars are eligible for

importation into the United States. The vehicles which J.K. believes are substantially similar are 2001 Porsche 911 Turbo passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2001 Porsche 911 Turbo passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 2001 Porsche 911 Turbo passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2001 Porsche 911 Turbo passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) substitution of the word "Brake" for the international ECE warning symbol on the markings for the brake failure indicator lamp; (b) replacement of the speedometer with one calibrated in miles per hour. The petitioner states that the entire instrument cluster will be replaced with a U.S.-model component.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.-model headlamps and front sidemarker lamps; (b) installation of U.S.-model taillamp

assemblies which incorporate rear sidemarker lamps; (c) installation of a high mounted stop lamp on vehicles that are not already so equipped.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: installation of a warning buzzer and a warning buzzer microswitch in the steering lock assembly.

Standard No. 118 *Power Window Systems*: installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off on vehicles that are not already so equipped.

Standard No. 201 *Occupant Protection in Interior Impact*: inspection of all vehicles and replacement of any components subject to the standard that are not identical to those installed on the vehicles' U.S. certified counterparts.

NHTSA has been advised by Porsche, in a June 16, 2000 submission to the agency, that the 2001 model 911 Turbo, available at dealers as of June 2000, is certified to all requirements of Standard 201, including the impact requirements for upper interior components.

Standard No. 208 *Occupant Crash Protection*: (a) Installation of a seat belt warning buzzer, wired to the driver's seat belt latch; (b) inspection of all vehicles and replacement of the driver's and passenger's side air bags, knee bolsters, control units, sensors, and seat belts with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicles are equipped at the front and rear outboard designated seating positions with combination lap and shoulder belts that are self-tensioning and that release by means of a single red pushbutton.

Standard No. 214 *Side Impact Protection*: inspection of all vehicles and installation of reinforcing door beams on vehicles that are not already so equipped.

Petitioner states that the bumpers and bumper support structure on all vehicles must be inspected for compliance with the Bumper Standard found at 49 CFR Part 581, and replaced, if necessary, to assure compliance with that standard.

The petitioner also states that a vehicle identification plate must be affixed to the vehicles near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR Part 565.

Petitioner also states that all vehicles must be inspected prior to importation for compliance with the Theft Prevention Standard at 49 CFR Part 541, and that U.S.-model anti-theft devices must be installed on a vehicles lacking that equipment.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL-401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 2, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 00-19922 Filed 8-4-00; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2000-7657]

General Motors North America, Inc., Receipt of Application for Decision of Inconsequential Noncompliance

General Motors North America, Inc., (GM) has determined that some 1995-1999 model year GM vehicles including Chevrolet and GMC light duty trucks, the Oldsmobile Bravada, Cadillac Escalade, and Pontiac Grand Prix, and Isuzu light duty trucks do not comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 118, *Power-operated window, partition, and roof panel systems*. The depression of the hazard warning flasher switch to its limit of travel may activate the retained accessory power (RAP) feature with no key in the ignition. This condition would not meet the operation requirements of S4 of FMVSS 118. A total of 973,922 GM vehicles and 1,540 Isuzu trucks may have this condition. Pursuant to 49 U.S.C. 30118(d) and

30120(h), GM has petitioned for a determination that the noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

The hazard warning system flasher switch in the noncompliant vehicles is a pushbutton that operates as a "push-on/push-off" switch. To turn the hazard flasher lamps on, the switch is pushed down (depressed) and then released. To turn the hazard flasher lamps off, the switch is depressed a second time and then released.

S4 of FMVSS 118 specifies conditions under which power-operated windows and roof panels may be closed. The relevant portions of S4 require that either the ignition key be in the "ON", "START", or "ACCESSORY" positions (S4(a)), or, in S4(e), that activation be possible only during the interval between removal of the ignition key and opening of either front door. In the affected vehicles, it is possible for the RAP feature to be activated when the hazard flasher switch is at the bottom of travel, whether or not a key is in the ignition.

Under certain conditions, unintended or so-called "sneak circuits" may exist if the switch is being depressed and is manually held to its full extent of travel. The sneak circuits disappear when the switch is released. The presence of these sneak circuits can cause the RAP feature to be activated when the key is not in the ignition.

If activated, the RAP would remain operational for up to 20 minutes, depending on the vehicle model, or until a door handle is pulled, whichever occurs first. In some vehicles only the front door handles will deactivate the RAP, while in other models the rear door handles also will deactivate it. While the RAP is activated, it is possible to operate certain vehicle controls, including the power window and sunroof controls.

There are two methods by which RAP can be activated in these vehicles when the key has been removed from the ignition. The first requires depression of the hazard switch to the extreme bottom of travel with some lateral force applied to it. In most switches, RAP cannot be activated by this method, even intentionally by experts attempting to do so. In testing conducted by GM in relation to this condition, GM reports

that no child activated RAP by this method.

The second method to activate RAP requires the simultaneous operation of the hazard switch and the service brake. Even if left alone and unattended in a parked vehicle, an individual child would not be likely to depress the hazard switch and the brake pedal simultaneously. In testing conducted by GM the company reports that no individual child ever simultaneously operated the brake and the hazard warning switch.

GM believes that this noncompliance with FMVSS 118 is inconsequential to motor vehicle safety. Its reasoning is that a number of specific events, each of which has a low possibility of occurring, all would have to occur before an opportunity would exist in which a person could be injured by a power operated window or sunroof.

The petitioner has indicated that the noncompliance will not result in any safety, reliability or serviceability concern for the vehicle operator.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL-401, 400 Seventh Street, SW., Washington, DC, 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: September 6, 2000.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: August 1, 2000.

Stephen R. Kratzke,
Associate Administrator for Safety Performance Standards.

[FR Doc. 00-19920 Filed 8-4-00; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 28, 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 September 6, 2000 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510-0069.

Form Number: None.

Type of Review: Extension.

Title: Administrative Offset, Collection of Past-Due Child Support Final Rule.

Description: The Debt Collection Improvement Act of 1996 authorizes the collection of past-due child support by offset of non-tax Federal payments. Executive Order 13019 of September 28, 1996 requires Treasury to promptly develop and implement procedures necessary to implement this authority.

Respondents: State, Local or Tribal Government.

Estimated Number of Respondents: 54.

Estimated Burden Hours Per Respondent: 103 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 5,562 hours.

Clearance Officer: Juanita Holder, Financial Management Service, 3700 East West Highway, Room 144, PGP II, Hyattsville, MD 20782.

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. 00-19877 Filed 8-4-00; 8:45 am]

BILLING CODE 4810-35-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 31, 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 September 6, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545-0087.

Form Number: IRS Forms 1040-ES, 1040-ES (NR), and 1040-ES (Español).
Type of Review: Revision.
Title: Estimated Tax for Individuals (1040-ES); U.S. Estimated Tax for Nonresident Alien Individuals (1040-ES (NR)); and Contribuciones Federales Estimadas Del Trabajo Por Cuenta Propia Y Sobre El Empleo de Empleados Domesticos-Puerto Rico (1040-ES (Español))
Description: Form 1040-ES is used by individuals (including self-employed) to make estimated tax payments if their

estimated tax due is \$500 or more. IRS uses the data to credit taxpayers' accounts and to determine if estimated tax has been properly computed and timely paid.

Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 14,563,250.
Estimated Burden Hours Per Respondent/Recordkeeper:

	1040-ES	1040-ES (NR)
Recordkeeping	52 min.	40 min.
Learning about the law or the form	28 min.	19 min.
Preparing the worksheets and payment vouchers	48 min.	49 min.
Copying, assembling, and sending the payment voucher to the IRS	10 min.	10 min.

	1040-ES (Español)
Mantener los records	7 minutos.
Aprendiendo acerca de la ley	7 minutos.
Preparando las hojas de computaciones y los "Pago-Comprobantes"	35 minutos.
Copiar, organizar y enviar los "Pago-Comprobantes" al IRS	10 minutos.

Frequency of response: Quarterly.
Estimated Total Reporting/Recordkeeping Burden: 94,589,400 hours.
 OMB Number: 1545-0130.
 Form Number: IRS Form 1120S, Schedule D (Form 1120S), and Schedule K-1 (Form 1120S).
Type of Review: Revision.
Title: U.S. Income Tax Return for an S Corporation (1120S); Capital Gains

and Losses and Built-In Gains (Schedule D); and Shareholder's Share of Income, Credits, Deductions, etc. (Schedule K-1)
Description: Form 1120S, Schedule D (Form 1120S), and Schedule K-1 (Form 1120S) are used by an S corporation to figure its tax liability, and income and other tax-related information to pass through to its shareholders. Schedule K-1 is used to report to shareholders their share of the corporation's income,

deductions, credits, etc. IRS uses the information to determine the correct tax for the S corporation and its shareholders.
Respondents: Business or other for-profit, Farms.
Estimated Number of Respondents/Recordkeepers: 1,880,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
1120S	63 hr., 37min.	22 hr., 13 min.	40 hr., 59 min.	4 hr., 50 min.
Schedule D (1120S)	11 hr., 0 min.	4 hr., 38 min.	9 hr., 40 min.	1 hr., 20 min.
Schedule K-1 (1120S)	16 hr., 30 min.	10 hr., 25 min.	14 hr., 52 min.	1 hr., 4 min.

Frequency of response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 477,877,810 hours.
 OMB Number: 1545-0938.
 Form Number: IRS Form 1120-IC-DISC, Schedule K (Form 1120-IC-DISC), and Schedule P (Form 1120-IC-DISC).
Type of Review: Revision.
Title: Interest Charge Domestic International Sales Corporation Return (1120-IC-DISC); Shareholder's Statement of IC-DISC Distributions

(Schedule K); and Intercompany Transfer Price or Commission (Schedule P).
Description: U.S. corporations that have elected to be an interest charge domestic international sales corporation (IC-DISC) file Form 1120-IC-DISC to report their income and deductions. The IC-DISC is not taxed, but IC-DISC shareholders are taxed on their share of IC-DISC income. IRS uses Form 1120-IC-DISC to check the IC-DISC's

computation of income. Schedule K (Form 1120-IC-DISC) is used to report income to shareholders; Schedule P (Form 1120-IC-DISC) is used by the IC-DISC to report its dealings with related suppliers, etc.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 1,200.
Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
1120-IC-DISK	94 hr., 56 min.	19 hr., 54 min.	30 hr., 43 min.	2 h4., 25 min.

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
Schedule K	4 hr., 4 min.	18 min.	27 min.	0 min.
Schedule P	12 hr., 40 min.	1 hr., 29 min.	1 hr., 46 min.	0 min.

Frequency of response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 229,435 hours.
OMB Number: 1545-1016.
Form Number: IRS Form 8613.
Type of Review: Extension.
Title: Return of Excise Tax on Undistributed Income of Regulated Investment Companies.
Description: Form 8613 is used by regulated investment companies to compute and pay the excise tax on undistributed income imposed under 4982. IRS uses the information to verify

that the correct amount of tax has been reported.
Respondents: Business or other-profit.
Estimated Number of Respondents/Recordkeepers: 1,500.
Estimated Burden Hours Per Respondent/Recordkeeper:
 Recordkeeping—6 hr., 42 min.
 Learning about the law or the form—2 hr., 28 min.
 Preparing and sending the form to the IRS—2 hr., 42 min.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 17,820 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. 00-19878 Filed 8-4-00; 8:45 am]
BILLING CODE 4830-01-P



Federal Register

**Monday,
August 7, 2000**

Part II

Environmental Protection Agency

40 CFR Parts 9 and 35

**Drinking Water State Revolving Funds;
Interim Final Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 35

[FRL-6846-5]

RIN 2040-AD20

Drinking Water State Revolving Funds

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule.

SUMMARY: The national Drinking Water State Revolving Fund (DWSRF) program, which was established by the Safe Drinking Water Act (SDWA) Amendments of 1996, authorizes the U.S. Environmental Protection Agency (EPA) to award capitalization grants to States, which in turn may provide low-cost loans and other types of assistance to eligible public water systems to finance the costs of infrastructure projects needed to achieve or maintain compliance with SDWA requirements. States are also authorized to set aside a portion of their capitalization grants to fund a range of activities including source water protection, capacity development, and operator certification.

This interim final rule codifies the DWSRF Program Final Guidelines published in February 1997 and explains: what States must do to receive a capitalization grant; what States may do with capitalization grant funds intended for infrastructure projects; what States may do with funds intended for set-aside activities; and the roles of both the States and EPA in managing and administering the program. Each State has considerable flexibility to determine the design of its DWSRF program and to direct funding toward its most pressing compliance and public health needs.

DATES: This interim final rule is effective August 7, 2000. Public comments must be received by EPA, in writing, by October 6, 2000. Comments will be considered and, if necessary, EPA will issue a revised final rule changing today's interim final rule to respond to these comments.

ADDRESSES: Send written comments on this interim final rule to the Comment Clerk (Docket W-00-11), Water Docket (MC-4101), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency, 401 M Street, SW, East Tower Basement, Room EB57, Washington, DC 20460. Comments may also be submitted electronically to ow-docket@epa.gov.

Please submit an original and three copies of your comments and enclosures (including references). The Agency requests that commentors follow the following format: Type or print in ink, and cite, where possible, the paragraphs in this interim final rule to which each comment refers. Electronic comments must be submitted as a WordPerfect 5.1, 6.1, or 8.0 file or as an ASCII file avoiding the use of special characters and forms of encryption. Electronic comments must be identified by Docket W-00-11. Comments and data will also be accepted on disks in the formats above. Electronic comments may be filed online at many Federal Depository Libraries. Commentors who want EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

The record for this interim final rule has been established under Docket W-00-11, which includes supporting documentation, and is available for review at the Water Docket, U.S. Environmental Protection Agency, 401 M Street, SW, East Tower Basement, Room EB57, Washington, DC 20460. For access to the Docket materials, please call (202) 260-3027 between 9 a.m. and 3:30 p.m. (Eastern Time), Monday through Friday, for an appointment and reference Docket W-00-11.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Kimberley Roy, Implementation and Assistance Division, Office of Ground Water and Drinking Water (MC-4606), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. The telephone number is (202) 260-2794 and the e-mail address is roy.kimberley@epa.gov. For general information, contact the Safe Drinking Water Hotline, toll free at (800) 426-4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 a.m. to 5:30 p.m. (Eastern Time). DWSRF program information, including a copy of this interim final rule, are available on EPA's Office of Ground Water and Drinking Water website at <http://www.epa.gov/safewater/dwsrf.html>.

SUPPLEMENTARY INFORMATION: *Regulated Entities:* Entities listed in § 35.3500 are regulated by this rule. Regulated categories and entities include:

Category	Regulated entities
Government	Governments/Agencies of the 50 States and the Commonwealth of Puerto Rico.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated by this action. To determine whether your organization is regulated by this action, you should carefully examine the applicability criteria in § 35.3500 of this rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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I. Statutory Authority

This interim final rule implements section 1452 of the SDWA (42 U.S.C. 300j-12) which establishes a national DWSRF program to assist public water systems in financing the cost of drinking water infrastructure projects needed to achieve or maintain compliance with SDWA requirements and to further the public health objectives of the Act. Section 1452(g)(3) of the SDWA states that "the Administrator shall publish guidance and promulgate regulations as may be necessary to carry out the provisions of this section."

II. Purpose

This interim final rule codifies and implements requirements for the national DWSRF program under section 1452 of the SDWA. This interim final rule supplements EPA's general grant regulations at 40 CFR part 31 which contain administrative requirements that apply to governmental recipients of EPA grants and subgrants. With the exception of requirements for the participation of minority and women's business enterprises (MBE/WBEs), EPA's general grant regulations at 40 CFR part 31 do not apply to recipients of loans and other types of assistance from a State DWSRF program Fund. The requirements for the participation of MBE/WBEs apply to assistance recipients under EPA's fiscal year 1993 Appropriations Act (Pub. L. 102-389). In developing this interim final rule, EPA has attempted to identify all the major program requirements. To that

end, this rule includes items required by the SDWA and those additional program requirements that EPA considers necessary for effective program management.

This interim final rule applies to States (i.e., each of the 50 States and the Commonwealth of Puerto Rico) which receive capitalization grants and are authorized to establish a Fund under section 1452 of the SDWA. While eligible public water systems and other assistance recipients are not regulated by this interim final rule, they may be indirectly affected because it includes requirements that they must meet in order to receive funding from the State for purposes authorized under section 1452 of the SDWA. This interim final rule does not apply to Indian Tribes and Alaska Native Villages, the District of Columbia, and other jurisdictions (i.e., Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and Guam) that receive grants under section 1452 because they are not authorized to establish a Fund. Grants under section 1452 to Indian Tribes and Alaska Native Villages, the District of Columbia, and other jurisdictions are administered by the EPA Regional Offices under separate guidance.

III. DWSRF Program Background

The SDWA authorizes EPA to award capitalization grants to States that have established DWSRF programs complying with the requirements of section 1452. States use a portion of these grants to capitalize a revolving Fund from which low-cost loans and other types of assistance are provided to publicly-owned and privately-owned community water systems and non-profit noncommunity water systems to finance the costs of infrastructure projects. States must also contribute to the capitalization of their DWSRF programs by depositing State monies equaling at least 20 percent of each grant into the Fund. Loan repayments made by assistance recipients to the States return to the Fund and provide a continuing source of financing for projects. States are responsible for developing a priority system that identifies how projects will be ranked for funding and a list of projects, in priority order, that are eligible for funding.

While it is essential to address infrastructure needs of public water systems, Congress recognized the value of establishing programs which will prevent drinking water problems in the future. Therefore, States may set aside a portion of their capitalization grants to fund activities that encourage enhanced water system management and help to

prevent contamination problems through source water protection measures. The success of these set-aside activities will act to safeguard the DWSRF program funds that are provided for improving system compliance and public health protection. The SDWA also places particular emphasis on assisting small systems serving fewer than 10,000 people and on systems serving less affluent populations by providing greater funding flexibility for these systems.

A State may combine the financial administration of the Fund with the financial administration of any other revolving fund established by the State, including the Clean Water State Revolving Fund (CWSRF) program established under Title VI of the Clean Water Act (CWA). However, section 1452(g)(1)(B) of the SDWA requires that "the authority to establish assistance priorities and carry out oversight and related activities (other than financial administration) with respect to assistance remains with . . ." the State primacy agency, after consultation with other appropriate State agencies.

In view of this language and the overall role of the State primacy agency in SDWA programs, EPA has determined that Congress intended for the primacy agency to be the State agency which determines assistance priorities for the DWSRF program, including priorities assigned to projects and allocation of funds between the Fund and set-asides, regardless of whether or not a State combines financial administration of the Fund. Further, although the primacy agency has the authority to carry out oversight and related activities, memoranda of understanding or interagency agreements may be entered into with other State agencies to manage aspects of the DWSRF program which could include reviewing assistance applications and project bid documents, monitoring projects, and ensuring compliance with environmental review and other program requirements.

Beginning one year after a State establishes its Fund (i.e., one year after the State has received its first DWSRF program capitalization grant for projects), a State may transfer an amount equal to 33 percent of a fiscal year's DWSRF program capitalization grant to the CWSRF program or an equivalent amount from the CWSRF program to the DWSRF program. This provision linking the national DWSRF and the CWSRF programs signals Congressional intent for EPA and the States to implement and manage the two programs in a similar manner. To the

maximum extent practicable, EPA intends to administer the financial aspects of the national DWSRF program in a manner that is consistent with the policies and procedures of the national CWSRF program. Each State has considerable flexibility to determine the design of its program and to direct funding toward its most pressing compliance and public health protection needs.

IV. Allocation of National Appropriation for DWSRF Program

Section 1452(m) of the SDWA authorizes Congress to appropriate a total of \$9.6 billion for the national DWSRF program for fiscal years 1994 through 2003.

A. National Set-Asides

National set-asides are reserved from funds annually appropriated by Congress under section 1452 of the SDWA. These national set-asides are:

(1) Indian Tribes/Alaska Native Villages. Section 1452(i) of the SDWA indicates that the Administrator may reserve 1.5 percent from annually appropriated funds under section 1452 to make grants to Indian Tribes and Alaska Native Villages. Projects for Indian Tribes and Alaska Native Villages that have not otherwise received either grant or DWSRF program assistance under section 1452 for a specific project are eligible for grant financing under this provision. EPA published the Tribal Set-aside Program Final Guidelines (EPA 816-R-98-020) in October 1998 establishing requirements for the selection of projects, project management, and program oversight for these grants. The Tribal Set-aside Program is administered by the EPA Regional Offices.

(2) Health effects studies. Section 1452(n) of the SDWA requires the Administrator to reserve \$10 million from annually appropriated funds under section 1452 to conduct health effects studies on drinking water contaminants. However, the Department of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriations Acts, 1998, 1999, and 2000 (Public Law 105-65, Public Law 105-276, and Public Law 106-74, respectively) have precluded the Administrator from reserving these funds from annually appropriated funds under section 1452 and have instead provided funding for health effects studies from other sources.

(3) Unregulated contaminant monitoring. Starting in fiscal year 1998, section 1452(o) of the SDWA requires the Administrator to reserve \$2 million

from annually appropriated funds under section 1452 to pay for the costs of monitoring unregulated contaminants under section 1445(a)(2)(C).

(4) Small system technical assistance. Section 1452(q) of the SDWA indicates that the Administrator may reserve up to 2 percent of the funds appropriated under section 1452 in fiscal years 1997 through 2003 to carry out the technical assistance for small systems provisions of section 1442(e) to the extent that the total amount of funding appropriated under section 1442(e) is not sufficient. The total combined amount of funds made available under this set-aside and the funds appropriated under section 1442(e) cannot exceed \$15 million per year.

(5) Operator training reimbursement. Section 1419(d)(1) of the SDWA requires the Administrator to provide grants to States to reimburse the costs of training and certifying operators of public water systems serving 3,300 persons or fewer to meet the requirements of the Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems published in the **Federal Register** (64 FR 5916) on February 5, 1999. Congress has authorized \$30 million annually for fiscal years 1997 through 2003 for grants for reimbursement under section 1419(d)(3). If the appropriation for any fiscal year is not sufficient to meet training and certification costs, the Administrator will, prior to any other allocation or reservation, reserve the necessary funds from those appropriated under section 1452.

B. Allotment to States

The funds available for allotment to the States for capitalization grants are those funds appropriated by Congress under section 1452 of the SDWA less the national set-asides. For fiscal year 1997 appropriations only, section 1452(a)(1)(D)(i) required EPA to allot funds according to the formula used for distributing public water system supervision (PWSS) grants in fiscal year 1995 under section 1443. The minimum proportional share that each State received was one percent of the funds available for allotment to all of the States. This interim final rule does not include this requirement for determining the State allotment formula for fiscal year 1997 appropriations.

Beginning with fiscal year 1998 appropriations, section 1452(a)(1)(D)(ii) of the SDWA requires EPA to allot funds to each State based on the State's proportional share of total eligible needs reported for the most recent Drinking

Water Infrastructure Needs Survey conducted under section 1452(h) of the SDWA. The minimum proportional share that each State can receive is one percent of funds available for allotment to all of the States.

The first Drinking Water Infrastructure Needs Survey: First Report to Congress (EPA 812-R-97-001) was presented to Congress on January 29, 1997. Prior to finalizing this January 1997 report, EPA solicited public comment on six options for using the results to determine the allotment formula for fiscal year 1998, 1999, 2000, and 2001 appropriations and finalized the allotment formula in the **Federal Register** (62 FR 12900) on March 18, 1997.

Subsequent Drinking Water Infrastructure Needs Surveys are due to Congress every four years after the January 1997 report. The State allotment formula for fiscal year 2002 appropriations and subsequent appropriations will be adjusted to reflect the needs identified in the most recently published report.

C. Allotment to Other Jurisdictions and the District of Columbia

Section 1452(j) of the SDWA requires the Administrator to reserve up to 0.33 percent of the funds available for allotment to the States to provide grants to the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and Guam. Section 1452(a)(1)(D) of the SDWA requires the Administrator to reserve one percent of the funds available for allotment to the States to provide grants to the District of Columbia. These grants are administered by the EPA Regional Offices.

V. DWSRF Program Implementation

The DWSRF Program Interim Guidance was distributed on October 4, 1996, to allow States to begin to develop their DWSRF programs and to allow capitalization grants to be awarded as soon as possible. The notice of availability of the Interim Guidance was published in the **Federal Register** (61 FR 55635) on October 28, 1996, and announced a public comment period which ended on November 28, 1996. EPA subsequently held a series of public meetings with stakeholders to provide information about the program and to review the Interim Guidance. Comments received during the period of public comment and from attendees of the public meetings were critical in developing the DWSRF Program Final Guidelines.

The DWSRF Program Final Guidelines (EPA-816-R-97-005) were

signed by the Assistant Administrator for Water on February 28, 1997. The Final Guidelines were made widely available to stakeholders, including the appropriate State agencies that are recipients of the DWSRF program capitalization grants and were published in the **Federal Register** (63 FR 59844) on November 5, 1998.

Program requirements contained in the DWSRF Program Final Guidelines are superceded by this interim final rule. However, the Final Guidelines, the DWSRF program management manual, and other memoranda such as periodic question and answer documents will continue to provide guidance to States on DWSRF program implementation.

VI. Rule Development Process

This interim final rule is the result of a thorough stakeholder consultation process. Because States have the responsibility for managing and administering the DWSRF program, members of a State/EPA SRF Work Group (formed to address policy implementation issues for the national DWSRF and CWSRF programs) were given the opportunity to review and comment on previous drafts of this rule. The State/EPA SRF Work Group is comprised of State DWSRF managers, State CWSRF managers, and managers of State financial agencies as well as EPA Regional and Headquarters staff. In May 1998, comments on a draft outline of the interim final rule were solicited and discussed at a State/EPA SRF Work Group meeting in Washington, District of Columbia. All comments on the draft outline were considered in developing the first draft of this rule.

In September 1998, the first draft of this rule was sent to the State/EPA SRF Work Group for a 30 day comment period. Work Group members were encouraged to share the draft rule with their colleagues from other States. EPA received comments from 27 parties, 18 of whom were Work Group members. A number of comments that EPA considered significant (because they addressed policy issues or because they were submitted by more than one commentator) were discussed at a Work Group meeting in Seattle, Washington in November 1998. After the meeting, all comments were considered in developing the second draft of this rule.

The second draft of this rule was posted on the Internet on April 12, 1999, for a 45 day public comment period to give all interested parties an opportunity to comment. National stakeholder organizations, the State/EPA SRF Work Group, and State DWSRF managers were notified by EPA when the rule was posted. EPA received

comments from 32 parties representing State government agencies, national trade organizations, and national State government organizations. All comments were considered in developing this interim final rule.

VII. Major Matters in This Rule

This interim final rule includes several modifications or additions to the DWSRF Program Final Guidelines based on policies that have evolved as the DWSRF program has been implemented. These modifications or additions to the Final Guidelines provide additional flexibility to States in implementing their programs. The policies released after the DWSRF Program Final Guidelines went through rounds of comment and revisions in memoranda, guidance documents, or were published in the **Federal Register** for public comment. The requirements in these policies are reflected in this interim final rule.

A. Withholdings of Funds (40 CFR 35.3515 (b)(1)(i) Through (b)(1)(iii))

In order to avoid a withholding of DWSRF program funds, each State is required to: (1) Ensure that new community water systems and new nontransient, noncommunity water systems demonstrate adequate technical, managerial, and financial capacity; (2) develop and implement a strategy to assist existing systems in acquiring and maintaining capacity; and (3) adopt and implement a program for certifying operators of community and nontransient, noncommunity water systems.

EPA published the Draft Guidance on Implementing the Capacity Development Provisions of the SDWA Amendments for public comment in February 1998 for a 60 day comment period and published Final Guidance (EPA-816-R-98-006) in July 1998. The Final Guidance established national policy regarding the implementation of capacity development related provisions of the SDWA including how EPA would assess State capacity development programs for purposes of making withholding decisions.

This interim final rule reflects the requirements in sections 1420(a) and 1452(a)(1)(G)(i) of the SDWA that EPA withhold 20 percent of a State's allotment unless the State has the legal authority or other means to ensure that all new community water systems and new nontransient, noncommunity water systems commencing operations after October 1, 1999, demonstrate technical, managerial, and financial capacity with respect to each drinking water regulation in effect, or likely to be in

effect, on the date of commencement of operations.

EPA made the determination in the Final Guidance on Implementing the Capacity Development Provisions that, for fiscal year 1999 allotments only, States would receive 100 percent of their allotments if they had the necessary basis of authority (statutory authority or other means) and were in the process of a scheduled administrative rulemaking, or were otherwise developing implementing authorities with a realistic schedule and expectation to have fully functional programs as of October 1, 1999. States failing to meet this requirement at the time of their capitalization grant awards would have 20 percent of their allotments "held back." This 20 percent holdback of fiscal year 1999 allotments would become a permanent withholding for any State that could not demonstrate by September 30, 1999, that it would have a fully functional program in place on October 1, 1999.

EPA also made the determination in the Final Guidance on Implementing the Capacity Development Provisions that, for fiscal year 2000 allotments and beyond, withholdings would be based on an assessment of the status of the State program as of October 1 of the fiscal year for which the funds were allotted. This interim final rule only reflects the withholding provisions in the Final Guidance for fiscal year 2000 allotments and beyond.

This interim final rule reflects the requirements in sections 1420(c)(1) and 1452(a)(1)(G)(i) of the SDWA that EPA withhold funds from any State unless the State is developing and implementing a strategy to assist public water systems in acquiring and maintaining technical, financial, and managerial capacity. The amount of a State's allotment that will be withheld is 10 percent for fiscal year 2001, 15 percent for fiscal year 2002, and 20 percent for each subsequent fiscal year. EPA made the determination in the Final Guidance on Implementing the Capacity Development Provisions that withholdings would be based on an assessment of the status of the State strategy as of October 1 of the fiscal year for which the funds were allotted. This interim final rule reflects the withholding provisions in the Final Guidance.

EPA published the Public Review Draft Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems in the **Federal Register** (63 FR 15064) for public comment on March 27, 1998, and the Final Guidelines in the **Federal**

Register (64 FR 5916) on February 5, 1999. This interim final rule reflects the requirements in sections 1419(b) and 1452(a)(1)(G)(ii) of the SDWA that, beginning on February 5, 2001 (two years after the Operator Certification Final Guidelines were published), EPA will withhold 20 percent of a State's allotment unless the State has adopted and is implementing a program for certifying operators of community and nontransient, noncommunity water systems that meets the requirements of section 1419 of the SDWA.

This interim final rule also states that the determination for withholdings will be based on an assessment of the status of the State program for each fiscal year. After seeking comment, EPA will finalize the specific process for reviewing and making withholding determinations for operator certification program submittals and publish it in the **Federal Register**. This process will be included as part of the Operator Certification Final Guidelines in Section III (Program Submittal Process), Subsection A (Submittal Schedule and Withholding Process), which is currently reserved in these Final Guidelines.

B. Use of Examples of Projects Eligible for Assistance From the Fund (40 CFR 35.3520(b))

During development of this interim final rule, several commentors expressed concern that the use of examples of projects that are eligible for assistance from the Fund could be perceived as exclusionary. Specifically, commentors were concerned that if there is a project that falls under a particular category but does not closely match an example, then it could be construed that the project would be ineligible. The use of examples of eligible projects is not exclusionary. Examples of eligible projects are used simply to clarify the types of projects that fall under a particular project category in order to improve the readability of this interim final rule. For instance, although water meters are not included in this interim final rule as a funding example under the transmission and distribution project category, they are eligible if owned and maintained by a public water system. Questions about the eligibility of specific types of projects are generally handled by EPA on a case by case basis.

C. Eligibility of Creation of New Public Water Systems for Assistance From the Fund (40 CFR 35.3520(b)(2)(vi))

Section 1452(a)(2) of the SDWA authorizes a State to provide assistance from the Fund to a public water system,

which is defined in section 1401 of the SDWA as "a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves at least 25 individuals * * *". Several States expressed concern that this provision could be interpreted to prevent them from providing assistance to an entity (e.g., homeowners' association, township) that has a public health problem and is not currently a public water system, but which would become a Federally regulated public water system upon construction of a piped system.

In response to State concerns, EPA proposed a policy on the eligibility of providing assistance from the Fund to create a public water system. This policy was published in the **Federal Register** (63 FR 32208) on June 12, 1998, for a 30 day comment period. EPA also held a stakeholder meeting to discuss the policy. After consideration of comments, a final policy was published in the **Federal Register** (63 FR 59299) on November 3, 1998. The final policy allows for assistance to be provided for the creation of a Federally regulated community water system to address an existing public health problem caused by unsafe drinking water provided by individual wells or surface water sources. This policy also applies to situations where a new regional community water system is created by consolidating several existing systems that have technical, financial, or managerial difficulties.

A proposed project may only receive assistance if the following conditions are met: (1) Upon completion of the project, the entity responsible for the loan must meet the definition of a Federal community water system; (2) the project must be on the State's priority list of projects eligible for funding and must address an actual public health problem with serious risks; (3) the project must be limited in scope to the specific geographic area affected by contamination; (4) the project can only be sized to accommodate a reasonable amount of growth expected over the life of the facility—growth cannot be a substantial portion of the project; (5) the project must meet the same technical, financial, and managerial capacity requirements that the SDWA requires of all DWSRF program assistance recipients; and (6) the project must be a cost-effective solution to the public health problem.

Condition (1) is specifically included in § 35.3520(a)(2). The statement in condition (2) that "the project must be on the State's priority list of projects

eligible for funding," the statement in condition (4) that "the project can only be sized to accommodate a reasonable amount of growth expected over the life of the facility," and condition (5) are not specifically included in § 35.3520(b)(2)(vi) of this interim final rule because the provisions in these conditions are addressed in other sections of the rule (§ 35.3555(c)(2), § 35.3520(e)(5), and § 35.3520(d)(2), respectively) as general requirements that all projects must meet to be eligible for assistance.

The latter part of condition (2) stating that a project "must address an actual public health problem with serious risks" and condition (6) are specifically included in § 35.3520(b)(2)(vi). Condition (3) is clarified in § 35.3520(b)(2)(vi) by indicating that projects to address existing public health problems associated with individual wells or surface water sources must be limited in scope to the specific geographic area affected by contamination. Condition (3) is also clarified in § 35.3520(b)(2)(vi) by indicating that projects that create new regional community water systems by consolidating existing systems must be limited in scope to the service area of the systems being consolidated. The latter part of condition (4) stating that "growth cannot be a substantial portion of the project" is specifically included in § 35.3520(b)(2)(vi) of this interim final rule as an additional test that projects must meet to be eligible for assistance. As noted earlier, a general requirement for an applicant to receive DWSRF program funding is that a project must be sized only to accommodate a reasonable amount of growth expected over the life of the facility. However, if a substantial portion of a project to create a new system involves funding capacity for future populations anticipated by reasonable growth projections, then the project is not eligible. The purpose of conditions (3) and (4) is to focus the use of funds from the DWSRF program on solving existing public health problems rather than financing new development.

D. Ineligibility of Dams, Reservoirs, Water Rights, and Future Population Growth for Assistance From the Fund (40 CFR 35.3520(e)(1) Through (e)(3) and (e)(5))

During development of the DWSRF Program Final Guidelines and this interim final rule, many comments were received on EPA's decision to make the construction and rehabilitation of dams and reservoirs and the purchase of water rights ineligible for assistance from the Fund. In making the decision to restrict

these types of projects and activities from funding, EPA considered the intent of Congress in passing the SDWA Amendments and, in particular, the required criteria of section 1452(a)(2) that financial assistance under the DWSRF program “* * * may be used by a public water system only for expenditures * * * of a type or category which the Administrator has determined * * * will facilitate compliance with the national primary drinking water regulations applicable to the system under section 1412 or otherwise significantly further the health protection objectives of the Act.”

EPA also considered the required criteria of section 1452(b)(3)(A) of the SDWA to focus limited dollars on projects needed to address the most serious risk to human health, to ensure that the nation’s drinking water is safe through compliance with the national primary drinking water regulations, and to assist those systems with the greatest economic need. Examples of such projects include installation of filtration facilities to help systems meet the Surface Water Treatment Rule, treatment technologies to meet SDWA regulated contaminants, and consolidation of systems that fail to maintain adequate technical, financial, and managerial capacity.

EPA believes that the foremost purpose of the construction and rehabilitation of dams and reservoirs and the purchase of water rights is not to improve drinking water quality, but to satisfy demand for drinking water. Providing DWSRF program assistance for these types of projects will not further the objectives Congress set out in the SDWA to the same extent as the other projects eligible under this interim final rule. The position that the construction and rehabilitation of dams and reservoirs and the purchase of water rights are ineligible for assistance from the Fund has been maintained in this interim final rule in § 35.3520 (e)(1) through (e)(3).

The DWSRF Program Final Guidelines and this interim final rule do allow for specific exceptions to the restrictions on using DWSRF program funds for the purchase of water rights and for the construction and rehabilitation of reservoirs. The exception to the restriction on the purchase of water rights is for those rights that are owned by a system that is being purchased through consolidation as part of a capacity development strategy. The exceptions to the restriction on reservoirs are finished water reservoirs and those reservoirs that are part of the treatment process

and are on the property where the treatment facility is located.

The DWSRF Program Final Guidelines and this interim final rule limit the use of DWSRF program funds for costs associated with population growth. Section 1452(g)(3) of the SDWA calls on EPA to publish guidance and regulations as may be necessary to carry out the program, including “guidance to avoid the use of funds made available under * * * [section 1452] to finance the expansion of any public water system in anticipation of future population growth.” In the legislative history to the SDWA Amendments, Congress explained that EPA is not to implement this provision in a manner that would “* * * preclude the use of SRF financing for facilities with the capacity necessary to meet the objectives of the Safe Drinking Water Act for the population to be served by the facility over its useful life.” [H. Conf. Rep. No. 104–741, at 89 (1996).]

It is clear that Congress did not intend for DWSRF program funds to be used to expand drinking water facilities solely in anticipation of future population growth. However, when read together, the language of the SDWA and its legislative history demonstrate that Congress did allow for the use of DWSRF program funds to accommodate a reasonable amount of population growth, which at the time that funding is provided, is expected to occur over the useful life of a facility. This concept is reflected in this interim final rule in § 35.3520(e)(5).

E. Inclusion of Eligible Project Reimbursement Costs Within Loans (40 CFR 35.3525(a)(2))

Several States wanted to have the flexibility to notify eligible privately-owned and publicly-owned systems that they will receive funding from the State, allow those systems to move ahead with construction, and then reimburse the systems for costs incurred in the time period between the notification and execution of the loan agreement. This flexibility would encourage systems to move ahead with construction in order to, for example, take advantage of seasonal construction cycles. This flexibility was particularly needed for privately-owned systems which cannot benefit from the refinancing provisions under section 1452(f)(2) of the SDWA.

In response to State concerns, EPA proposed a policy on the eligibility of reimbursement of incurred costs for approved projects. This policy was published in the **Federal Register** (63 FR 32208) on June 12, 1998, for a 30 day comment period. EPA also held a stakeholder meeting to discuss the

policy. After consideration of comments, a final policy was published in the **Federal Register** (64 FR 1802) on January 12, 1999. The final policy stated that a project (for a privately-owned or publicly-owned system) that has been given approval, authorization to proceed, or any similar action by the State prior to initiation of construction would be eligible for reimbursement for construction costs incurred after such State action, provided that the project meets all of the requirements of the DWSRF program and certain criteria. Planning and design and associated pre-project costs are eligible for reimbursement regardless of when the costs were incurred.

A project must be on the State’s fundable list, developed using a priority system approved by EPA. However, a project on the comprehensive list which is funded due to the bypass of a project on the fundable list may be eligible for reimbursement of costs incurred after the system has been informed that it will receive funding. Projects receiving reimbursement of incurred costs are also subject to all other DWSRF program requirements applicable to a recipient of funds, including an environmental review which must consider the impacts of the project based on the pre-construction site conditions. Failure to comply with the State’s environmental review process cannot be justified on the grounds that costs have already been incurred, environmental impacts have already been caused, or contractual obligations have been made prior to the binding commitment. This interim final rule reflects the provisions in the final policy.

F. Assistance From the Fund for Disadvantaged Communities (40 CFR 35.3525(b))

Section 1452(d) of the SDWA allows a State to provide additional loan subsidies to benefit communities meeting the State’s definition of “disadvantaged” or which the State expects to become “disadvantaged” as a result of the project, provided that “* * * for each fiscal year, the total amount of loan subsidies made by a State * * * may not exceed 30 percent of the amount of the capitalization grant received by the State for the year.”

This interim final rule clarifies EPA’s interpretation of this provision which is that the 30 percent allowance for loan subsidies to disadvantaged communities refers to the amount of loan subsidies (e.g., loans which include principal forgiveness, negative interest rate loans) that can be provided from funds associated with a particular fiscal year’s capitalization grant. If a State does not

take the entire 30 percent allowance for loan subsidies associated with a particular fiscal year's capitalization grant, it cannot reserve the authority to take the remaining balance from future capitalization grants. For example, if a State indicates that it will use an amount equal to 20 percent of the amount of a capitalization grant for loan subsidies, it cannot reserve the authority to take an additional 10 percent from a future capitalization grant. Loan subsidies in the form of reduced interest rate loans that are at or above zero percent do not fall under the 30 percent allowance.

A State must indicate in its Intended Use Plan (IUP) how much of the 30 percent allowance in loan subsidies it plans to make available to disadvantaged communities. To the maximum extent practicable, a State must identify in its IUP the projects that will receive disadvantaged assistance and the respective amounts. A State can then provide loan subsidies for those projects it has identified in its IUP. Because this approach provides a great deal of flexibility to States, EPA believes that there should be constraints on the time period that States can have to commit funds taken for loan subsidies. Therefore, this interim final rule requires States to commit capitalization grant and required State match dollars taken for loan subsidies in accordance with the binding commitment requirements in § 35.3550(e). In addition, States must commit any other dollars (e.g., principal and interest repayments, investment earnings) taken for loan subsidies to projects over the same time period during which binding commitments are made for the capitalization grant from which the allowance was taken.

G. Program Administration: Fees Paid Directly by an Assistance Recipient (40 CFR 35.3530(b)(2))

Many States assess fees on assistance recipients to supplement program administration and other program costs. Examples of these fees include annual loan servicing fees, application fees, loan origination fees, and processing fees. A State may assess fees on an assistance recipient which are paid directly by the recipient (discussed in this section). A State may also assess fees on an assistance recipient and provide the recipient with the funds for the fees as principal in a loan (discussed in the next section).

Fees assessed on assistance recipients, which include interest earned on fees, must be deposited into the Fund or into an account outside of the Fund. If the fees are deposited into the Fund, they

are subject to the authorized uses of the Fund. If the fees are deposited into an account outside of the Fund, they must be used for program administration, other purposes for which capitalization grants can be awarded under section 1452, State match under sections 1452 (e) and (g)(2) of the SDWA, or combined financial administration of the DWSRF program and CWSRF program Funds where the programs are administered by the same State agency. Allowing fees to be used for combined financial administration enables States which administer the CWSRF and DWSRF programs under the same State agency to combine eligible funds to pay costs for financial oversight of the two programs and thereby ease their administrative burden. The uses of fees assessed on assistance recipients as provided in this interim final rule are consistent with the program income requirements of EPA's general grant regulations at 40 CFR 31.25 and offer a great deal of flexibility to States.

A State must provide information in its IUP on the rates and uses of fees it assesses on assistance recipients and give an accounting of the total dollar amount of funds it is holding in fee accounts. A State must establish in its Biennial Report that it has used the fees only for eligible purposes and must submit information on the total dollar amount in fee accounts as part of the detailed financial reports.

H. Program Administration: Fees Included as Principal in a Loan (40 CFR 35.3530(b)(3))

A State may assess fees on an assistance recipient and, within the principal of a loan, provide the recipient with the funds to pay the fees (i.e., the recipient pays the fees from the proceeds of the loan). EPA determined that such fees are permissible if they enable the State to make a loan which " * * * facilitate(s) compliance with national primary drinking water regulations * * * or otherwise significantly further(s) the health protection objectives" of the SDWA under section 1452(a)(2). However, this interim final rule imposes requirements and limitations on the amount and use of fees included as principal in a loan.

Fees included as principal in a loan, which include interest earned on fees, must be deposited into the Fund or into an account outside of the Fund. If the fees are deposited into the Fund, they are subject to the authorized uses of the Fund. If the fees are deposited into an account outside of the Fund, they must be used for program administration or other purposes for which capitalization grants can be awarded under section

1452. Fees included as principal in a loan cannot be used for State match under sections 1452 (e) and (g)(2) of the SDWA or combined financial administration of the DWSRF program and CWSRF program Funds. EPA believes that the authorized uses for fees included as principal in a loan offer a great deal of flexibility to States.

After discussions with the State/EPA SRF Work Group during meetings in July 1998 and November 1998, the following three specific limitations on fees included as principal in a loan were included in this interim final rule: (1) Fees cannot be assessed on a disadvantaged community which receives a loan subsidy provided from the 30 percent allowance in § 35.3525(b)(2); (2) fees cannot cause the effective rate of a loan (which includes both interest and fees) to exceed the market rate; and (3) fees cannot be assessed if the effective rate of a loan could reasonably be expected to cause a system to fail to meet the technical, financial, and managerial capability requirements under section 1452 of the SDWA.

A State must provide information in its IUP on the rates and uses of fees included as principal in a loan and give an accounting of the total dollar amount of funds it is holding in fee accounts. A State must establish in its Biennial Report that it has used the fees only for eligible purposes and must submit information on the total dollar amount in fee accounts as part of the detailed financial reports.

I. Transfer and Cross-Collateralization of Funds Between the DWSRF and CWSRF Programs (40 CFR 35.3530 (c) Through (d))

Section 302 of the SDWA authorizes a State to transfer up to 33 percent of the amount of a fiscal year's DWSRF program capitalization grant to the CWSRF program or an equivalent amount from the CWSRF program to the DWSRF program. The Department of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriations Acts, 1998 and 1999 (Pub. L. 105-65 and Pub. L. 105-276, respectively) authorize cross-collateralization between the DWSRF and CWSRF programs.

EPA released a draft policy entitled "Transfer/Cross-collateralization Policy for the DWSRF and CWSRF" in June 1998 which specifies the provisions that States must meet in order to gain EPA approval for incorporating transfers and cross-collateralization provisions into their programs. This draft policy was developed with substantial input from EPA Regional staff, the State/EPA SRF

Work Group, and national stakeholder organizations. The final policy will be published in the **Federal Register**. This interim final rule includes the transfer and cross-collateralization requirements for both the DWSRF program and the CWSRF program.

J. Authorized Set-Aside Activities (40 CFR 35.3535(a)(2))

As in the DWSRF Program Final Guidelines, set-aside funds may not be used for projects or project-related costs eligible for funding from the Fund or for those projects or project-related costs explicitly identified as ineligible for assistance from the Fund in this interim final rule. This requirement was included in this rule because EPA determined that projects that are eligible for loans or other types of assistance from the Fund should not also be eligible to receive assistance from the set-asides in the form of grants which would not be required to be repaid. In addition, set-aside funds should not be used to provide assistance to projects that are explicitly ineligible for assistance from the Fund since it has been determined that these types of projects will not further the objectives Congress set out in the SDWA to the same extent as the projects that are eligible in this interim final rule.

During development of this interim final rule, several commentors indicated that the requirement that set-aside funds may not be used for any projects that are eligible or explicitly ineligible for assistance from the Fund is overly restrictive because there are some eligible project costs that States would want the flexibility to be able to finance from the set-asides. Specifically, commentors noted that they wanted the flexibility to provide grants to small systems for drinking water infrastructure planning and design as part of a State's technical assistance program, with the reasonable expectation that as a result of a grant, a recipient would then be in a position to apply for a loan from the Fund at a future time. In addition, commentors wanted the flexibility to provide grants to systems for projects that would assist in implementation of capacity development provisions.

In response to commentor concerns, this interim final rule allows for two exceptions to the requirement that a State may not use set-aside funds for those projects or project-related costs that are eligible or explicitly ineligible for assistance from the Fund. These exceptions are: (1) A State may use set-aside funds for project planning and design costs for small systems, and (2) a State may use set-aside funds for costs

associated with restructuring a system as part of a capacity development strategy. EPA believes that these exceptions provide the flexibility that commentors wanted.

K. State Program Management Set-Aside Match Requirement (40 CFR 35.3535(d)(2))

Section 1452(g)(2) of the SDWA states that “* * * each State may use up to an additional 10 percent of the funds allotted to the State under this section [for specified purposes] * * * if the State matches the expenditures with at least an equal amount of State funds. At least half of the match must be additional to the amount expended by the State for public water supervision in fiscal year 1993.” This interim final rule states that “* * * a State is authorized to use the amount of State funds it expended on its PWSS program in fiscal year 1993 (including PWSS match) as a credit toward meeting its match requirement. The value of this credit can be up to, but not greater than, 50 percent of the amount of match that is required. After determining the value of the credit that it is eligible to receive, a State must provide the additional funds necessary to meet the remainder of the match requirement. The source of these additional funds can be State funds (excluding PWSS match) or documented in-kind services.”

During development of this interim final rule, commentors had questions about how the match for the State program management set-aside is specifically calculated. Suggestions were made to include a specific example of how to calculate the match requirement in this interim final rule. Rather than include a lengthy example within the text of this rule, EPA worked to make the language describing the match for the set-aside more clear than it had been in the DWSRF Program Final Guidelines. The Final Guidelines, which can still serve as a resource for States, does include a lengthy example that States may refer to if they have any questions.

Commentors also suggested that a list of the specific types of in-kind services that are eligible for a State to use to meet the remainder of the match requirement should be included in this interim final rule. EPA determined that listing all of the eligible types of in-kind services in this interim final rule would be unnecessarily limiting and that in-kind services are sufficiently addressed in the DWSRF Program Final Guidelines and specific questions can be handled by EPA on a case by case basis.

L. Reserving Set-Aside Funds (40 CFR 35.3540(d))

The DWSRF Program Final Guidelines allowed States to “bank” (i.e., reserve) certain set-aside funds and/or authority that it could not use in the current year for use in future years to give States flexibility in implementing set-aside activities. Several early capitalization grant applications indicated that States were reserving a high percentage of set-aside funds with the intention of using only a small percentage in the short-term and leaving the remaining funds as undrawn reserves. Because EPA was concerned that reserved set-aside funds would sit idle while needed infrastructure projects went unfunded, a proposed policy was developed to describe how set-aside funds should be managed in the DWSRF program. The proposal was distributed to EPA Regional staff, States, and the State/EPA SRF Work Group in February 1998. After several rounds of review and comment, an interim final policy entitled “Management of Set-asides for the DWSRF Program” was released and became effective on March 15, 1999.

The interim final policy allowed a State to reserve set-aside funds from a capitalization grant and expend them over a period of time, provided that the State identifies the amount of funds reserved in the IUP and describes the use of the funds in workplans approved by EPA. With the exception of the local assistance and other State programs set-aside authorized under section 1452(k) of the SDWA, a State may also reserve the authority to take from future capitalization grant awards those set-aside funds that it has not included in workplans. The State must identify in its IUP the amount of authority reserved from a capitalization grant for future use.

States can submit annual or multi-year workplans in accordance with schedules identified by EPA Regional staff to describe how funds will be used. The length of workplans must be less than four years, unless a longer term is approved by EPA, and must be updated if the State significantly changes planned activities or budgets. This interim final rule reflects the provisions in the interim final policy.

M. State Match Requirement (40 CFR 35.3550(g))

This interim final rule reflects the requirement in section 1452(e) of the SDWA that a State deposit into the Fund an amount from State monies that equals at least 20 percent of each capitalization grant payment. However,

this interim final rule does not include the provision in section 1452(e) which allowed States to defer their matching requirement for fiscal year 1997 appropriations. Specifically, for grant payments made to States from funds appropriated in fiscal year 1997, States were authorized to defer deposit of their matching amount to no later than September 30, 1999. This flexibility was provided to those States that needed additional time to secure State funding for the required matching amount. States were required to identify the source of the matching funds in their capitalization grant applications and to agree to provide the State match for grant payments already received from fiscal year 1997 appropriations by September 30, 1999. In addition, after September 30, 1999, States could not draw Federal dollars from the EPA Automated Clearing House (ACH) for projects until the deferred State match had been expended and the States reached proportionality with previously drawn Federal dollars.

N. Preparation of an IUP (40 CFR 35.3555(a))

This interim final rule reflects the requirement in the DWSRF Program Final Guidelines that a State prepare an annual IUP as long as the Fund or set-aside accounts remain in operation. During development of this interim final rule, several commentors objected to this requirement because they believe that the SDWA only ties the preparation of an IUP to the award of a capitalization grant and is silent on what is required of States after capitalization ends. Section 1452(b)(1) of the SDWA states that "after providing for public review and comment, each State that has entered into a capitalization grant agreement pursuant to this section shall annually prepare a plan that identifies the intended uses of the amounts available to the State loan fund of the State." Thus, a State that has entered into an agreement to receive a capitalization grant under section 1452 must prepare an IUP each year, regardless of whether it receives a capitalization grant in that year.

In addition, section 1452(c) requires that "the fund corpus shall be available in perpetuity for providing financial assistance under this section." This provision shows that Congress intended for State DWSRF programs to continue after capitalization ends. The primary means by which the public and EPA can ensure that this provision and the intent of Congress is satisfied is through review of the IUP. Therefore, the language in this interim final rule has

not been changed as a result of the comments received.

O. Meaningful Public Review of the IUP (40 CFR 35.3555(b))

Section 1452(b)(1) of the SDWA requires a State to provide for public comment and review during the development of its IUP. Any State process that solicits input from a variety of interested parties, allows adequate time for the public to comment, and allows time for the State to address major comments meets the SDWA's public participation requirements for the IUP. This interim final rule reflects the requirement in the DWSRF Program Final Guidelines that a State seek "meaningful public review and comment" during the development of its IUP. During development of this interim final rule, comments were received that EPA should define the term "meaningful public review."

This interim final rule does not include specific requirements as to what constitutes "meaningful public review" of the IUP. Due to the variation among States, no single approach will work under all conditions. However, at a minimum, States should make an effort to include interested parties, such as environmental and public health groups, that extend beyond those on existing mailing lists when seeking public review. In addition, as a guide, States should strive to achieve the following objectives when seeking public review: (1) Assure that the public has the opportunity to understand official programs and proposed actions, and that the State fully considers the public's concerns; (2) assure that the State does not make any significant decision on any activity under section 1452 without consulting interested and affected segments of the public; (3) assure that the State action is as responsive as possible to public concerns; (4) encourage public involvement in implementing section 1452; (5) keep the public informed about significant issues and proposed project or program changes as they arise; (6) foster a spirit of openness and mutual trust between the State and the public; and (7) use all feasible means to create opportunities for public participation, and to stimulate and support public participation.

P. Priority System Requirements in the IUP (40 CFR 35.3555(c)(1))

This interim final rule requires that the IUP " * * * include a priority system for ranking individual projects for funding that provides sufficient detail for the public and EPA to readily understand the criteria used for

ranking." During development of this interim final rule, several commentors indicated that EPA should not require a State to include its priority system in the IUP, but instead should allow a State to provide a summary of the priority system or a reference to where the priority system can be found. Commentors gave the following primary reasons for not wanting to include the priority system in the IUP: (1) Many of the priority systems are complex and are not readily understood by the public, especially if the systems are in regulation; (2) including the priority system within the text of the IUP simply elongates and clutters the IUP and discourages people from reading it; and (3) including the priority system gives the impression to the public that the State is seeking additional comments when, in actuality, the priority system has already undergone public review and comment.

The language in this interim final rule has not been changed as a result of the comments received because EPA believes that the public should be given every opportunity to understand the basis for ranking projects. EPA believes that the language in this rule does not preclude a State that has a very complicated priority system which is difficult for the public to understand from developing a detailed summary that describes the criteria used to assess the priority for ranking individual projects, including points. In addition, if a State does not want to include the priority system within the text of the IUP, it can include the system as an attachment that is distributed with the IUP. Finally, a State can indicate in the IUP that the priority system was developed with public comment and therefore it is not taking additional comments, but the State is providing the information so that the public can understand the basis for ranking of projects.

Q. Cash Draw Rules (40 CFR 35.3560 and 35.3565)

This interim final rule details the specific requirements for how States access capitalization grant funds through the EPA ACH, which is a Federal funds transfer system to electronically deposit funds into a grant recipient's bank account. In § 35.3560 of this interim final rule, the general cash draw rules are provided for how States access capitalization grant funds through the ACH, including the formula for calculating the proportionate Federal share. In § 35.3565 of this interim final rule, the specific cash draw rules are provided for how States access capitalization grant funds through the

ACH for each of the authorized types of assistance from the Fund.

EPA published a Guide to Using EPA's Automated Clearing House for the DWSRF Program (EPA-832-B98-003) in September 1998 to explain, in more detail, the process States must use to access capitalization grant funds through the ACH. This Guide provides easy to understand examples, using sample capitalization grant amounts, of how to calculate the proportionate Federal share and how to calculate the cash draw ratios for each of the types of assistance from the Fund.

In the future, the EPA ACH will be replaced by a new Federal funds transfer system called the Automated Standard Application for Payments (ASAP). This change to ASAP will not have any effect on the cash draw rules in this interim final rule.

R. Audit Requirements (40 CFR 35.3570(b))

The DWSRF Program Final Guidelines, published in February 1997 after release of the Single Audit Act Amendments of 1996, reflected EPA's previous audit strategy which was to require annual independent audits of the DWSRF program—a policy that was consistent with requirements in the CWSRF program. However, provisions of the Single Audit Act Amendments of 1996 necessitated changes to this strategy. Specifically, since independent audits were not required by the Single Audit Act Amendments of 1996, EPA revised its audit strategy to request voluntary agreements from States to conduct these audits. The strategy was based on EPA's belief that independent audits of financial statements, beyond the Single Audit Act, are important to ensure the financial integrity of the DWSRF program. On October 16, 1997, a memorandum entitled "Clean Water and Drinking Water State Revolving Fund Financial Audit Strategy" was released after discussions among representatives from EPA Headquarters and Regional Offices, the Office of the Inspector General, the Office of Management and Budget, and many States.

Under the revised audit strategy for the DWSRF program, a State must comply with the provisions of the Single Audit Act Amendments of 1996 and Office of Management and Budget's Circular A-133 and Compliance Supplement. States may agree to implement, on an annual basis, independent audits and document these agreements in the Operating Agreements or in other parts of the capitalization grant agreements. These independent audits are expected to be conducted

according to Generally Accepted Government Auditing Standards (GAGAS) and provide an auditor's opinion on the DWSRF program financial statements, reports on internal controls, and reports on compliance with section 1452 of the Act, applicable regulations, and EPA's general grant requirements. Based on a determination by EPA, those States that do not conduct independent audits will be periodically audited by the EPA Office of Inspector General.

For those States that conduct independent audits, the audit report should be completed and submitted to EPA within one year of the end of the fiscal year adopted by the State for the DWSRF program. Specifically, copies of the audit report should be submitted to the EPA DWSRF Regional Coordinator and to the Western Audit Division, Divisional Inspector General for Audit. This interim final rule reflects the provisions in the revised audit strategy. Exclusive of requirements associated with the Single Audit Act, a State must include detailed financial statements presenting the financial status of the DWSRF program in its Biennial Report.

S. Application of Federal Cross-Cutting Authorities (Cross-Cutters) (40 CFR 35.3575)

There are a number of Federal laws, executive orders, and government-wide policies that apply by their own terms to projects and activities receiving Federal financial assistance, regardless of whether the statute authorizing the assistance makes them applicable. These Federal cross-cutting authorities (*i.e.*, cross-cutters) include Federal laws such as the Endangered Species Act (ESA) and the Age Discrimination Act (ADA). A few cross-cutters apply by their own terms only to the State as the grant recipient because the authorities explicitly limit their application to grant recipients.

Federal cross-cutter requirements, which include environmental review requirements, must be applied to projects and activities receiving Federal dollars. Because each State's Fund consists of an indistinguishable combination of Federal, State, and recycled monies, EPA determined that Federal cross-cutter requirements must be applied to projects identified by the State whose cumulative funding is equivalent to the amount of the capitalization grant (*i.e.*, equivalency projects). The cross-cutter discussion in the DWSRF Program Final Guidelines resulted in some confusion among States as to how cross-cutter requirements must be applied to set-aside activities.

Due to requirements related to the deposit of funds in the DWSRF program, almost all of the funds used to conduct set-aside activities are Federal dollars. Therefore, Federal cross-cutter requirements must be applied to all set-aside activities for which a State provides assistance from capitalization grant funds deposited into set-aside accounts. However, in the case of most set-aside activities, the cross-cutter requirements will not be implicated because of the nature of the activities conducted under the set-asides. For example, if a State makes an expenditure from its set-aside accounts for the salaries of State employees, the requirements of cross-cutters such as the ESA and the National Historic Preservation Act (NHPA) are not implicated.

This interim final rule reflects EPA's determination that the requirements of Federal cross-cutters must be applied to all activities for which a State provides assistance from capitalization grant funds deposited into set-aside accounts, to the extent that cross-cutter requirements are applicable. The requirements of Federal cross-cutters must also be applied to all projects for which a State provides assistance in amounts up to the amount of the capitalization grant deposited into the Fund. Federal anti-discrimination law requirements apply to all programs, projects, and activities for which a State provides assistance from the DWSRF program. Minority and women's business enterprise (MBE/WBE) procurement requirements and environmental review requirements (discussed in the following sections) apply to specific types of DWSRF program actions and are treated separately in this interim final rule.

Generally, a State that elects to impose the requirements of the Federal cross-cutters to projects and activities in amounts that are more than the amount of the capitalization grant may only credit this excess to meet future cross-cutter requirements on assistance provided from the respective accounts. For example, if a State takes \$2 million from a \$10 million capitalization grant for set-aside activities and then proceeds to apply cross-cutter requirements to set-aside activities in an amount equal to \$2.5 million (because the State has contributed \$500,000 of its own funds to these activities), the State can only credit the excess \$500,000 to meet future cross-cutter requirements for set-aside activities. A State cannot use this excess \$500,000 to meet future cross-cutter requirements for projects funded from the Fund.

This interim final rule provides clarification with respect to the role of States in ensuring compliance with Federal cross-cutters. Although EPA is ultimately responsible for ensuring compliance with Federal cross-cutters, primarily through DWSRF program oversight and approval, States review the projects and activities being funded under the program. Therefore, this interim final rule indicates that States are responsible for ensuring that assistance recipients comply with the cross-cutter requirements, including initiating any required consultations with State or Federal agencies responsible for individual cross-cutters. For example, before a Federally-assisted action that may affect an endangered species can begin, the Department of Interior's Fish and Wildlife Service must be consulted pursuant to section 7 of the ESA. States must notify EPA when it is necessary for the Agency to resolve any issues that may arise during consultations with other Federal agencies.

A list of the Federal cross-cutters that apply to the DWSRF program is provided in Appendix A of the DWSRF Program Final Guidelines. This list is subject to change.

T. Minority and Women's Business Enterprise (MBE/WBE) Procurement Requirements (40 CFR 35.3575(d))

The requirements for the participation of MBE/WBEs apply to assistance recipients under EPA's fiscal year 1993 Appropriations Act (Public Law 102-389), which states that "the Administrator of the Environmental Protection Agency shall, hereafter, to the fullest extent possible, ensure that at least 8 per centum of Federal funding for prime and subcontracts in support of authorized programs, including grants, loans and contracts * * * be made available to business concerns * * * owned or controlled by socially and economically disadvantaged individuals * * * [including] women."

This interim final rule requires that a State negotiate a fair share goal with the Regional Administrator (RA) of EPA for the participation of MBE/WBEs. The fair share goal must be based on the availability of MBE/WBEs in the relevant market area (*i.e.*, availability of MBE/WBEs State-wide or availability of MBE/WBEs in particular geographic areas of the State) to do the work under the DWSRF program. Each capitalization grant agreement must describe how a State will comply with MBE/WBE procurement requirements, including how it will apply the fair share goal to assistance recipients to which the requirements apply and how

it will assure that assistance recipients take the following six affirmative steps described in the general grant regulations at 40 CFR 31.36(e): (1) Include small, minority and women's businesses on solicitation lists; (2) assure that small, minority and women's businesses are solicited whenever they are potential sources; (3) divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small, minority and women's businesses; (4) establish delivery schedules, when the requirements of the work permits, which will encourage participation by small, minority and women's businesses; (5) use the services of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce, as appropriate; and (6) require the contractor to take the affirmative steps in (1) through (5) if the contractor awards subagreements.

Currently, the application of MBE/WBE requirements in the DWSRF program is described in a memorandum released on November 5, 1998, entitled "Application of Minority and Women-Owned Business Enterprise Requirements in the Clean Water and Drinking Water State Revolving Fund Programs" and in a memorandum released on December 29, 1998, entitled "FY 1999 MBE/WBE Terms and Conditions." These memoranda were released in response to the Supreme Court decision in *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995), which was a case arising out of the Department of Transportation. As a result of that decision, it became necessary to make changes in the application of MBE/WBE procurement requirements in all EPA grant programs.

These memoranda indicate that the fair share goal may be based either on the availability of MBE/WBEs State-wide or on the availability of MBE/WBEs in particular geographic areas of the State to do the work for procurement. The fair share goal applies to all procurement activities undertaken with assistance from the Fund or from set-aside accounts up to the amount of the capitalization grant (*i.e.*, "identified procurement activities"). The State may elect to apply the fair share goal in place for the year in which the DWSRF program assistance is awarded to the recipient or for the year in which the procurement action occurs. The method a State elects to use to apply the fair share goal must be described in the Operating Agreement or in another part of the capitalization grant agreement. For identified procurement activities, the State must assure that the recipients

of funding for these activities take the six affirmative steps as described in 40 CFR 31.36(e). A State must submit a MBE/WBE Utilization Report (EPA Form 5700-52A) to EPA within 30 days after the end of each Federal fiscal quarter.

EPA's Office of Small and Disadvantaged Business Utilization (OSDBU) is in the process of a rulemaking to address the use of MBE/WBE firms in procurements under EPA financial assistance agreements and will consolidate these requirements in a new 40 CFR part 33. This rulemaking process will address the application of MBE/WBE requirements in the DWSRF program, including reporting requirements. When the OSDBU's rule is promulgated, the MBE/WBE requirements in that rule will supercede the requirements in this interim final rule.

U. Environmental Review Requirements (40 CFR 35.3580)

As stated previously, cross-cutter requirements, which include environmental review requirements, must be applied to all set-aside activities for which a State provides assistance from capitalization grant funds deposited into set-aside accounts. In § 35.3580 (c), it is indicated that a State may elect to apply the procedures at 40 CFR part 6 and related subparts, which set out the requirements for EPA actions which are subject to the National Environmental Policy Act (NEPA), or apply its own "NEPA-like" State environmental review process (SERP) for conducting environmental reviews, provided that specific elements are met. In implementing environmental review requirements applicable to the DWSRF program, EPA has taken an approach similar to that of the CWSRF program whereby States must develop and implement environmental provisions for projects and activities receiving assistance.

EPA recognizes that there are types of activities conducted under set-asides that are not likely to have a potential environmental impact. Therefore, in this interim final rule, EPA has identified types of set-aside activities for which a State is not required to conduct environmental reviews because they are not likely to have a potential environmental impact. A State does not need to include provisions in its SERP for excluding these types of activities.

EPA's Office of Federal Activities (OFA) is currently revising 40 CFR part 6. However, this effort to revise 40 CFR part 6 is not expected to affect the environmental review requirement provisions in this interim final rule or

the SERPs that are currently approved and in effect in the States, since State environmental review procedures, although they may be based on 40 CFR part 6, are implemented under State statutes and authorities.

VIII. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Reviews

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

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

Today's interim final rule is not subject to the RFA, which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute. This rule pertains to grants which the APA expressly exempts from notice and comment rulemaking requirements. 5 U.S.C. 553(a)(2). Moreover, the Safe Drinking Water Act, as amended, also does not require EPA to issue a notice of proposed rulemaking prior to issuing this rule.

Although this interim final rule is not subject to the RFA, EPA nonetheless has assessed the potential of this rule to adversely impact small entities subject to the rule. The Agency has determined that this rule does not adversely impact small entities because small entities are not subject to this rule.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2040-0185. OMB approved the information collection requirements contained in the February 1997 DWSRF Program Final Guidelines. This rule does not contain any collection of information requirements beyond those already approved. Since this action imposes no new or additional information collection, reporting or record keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., no information request was submitted to the OMB for review. OMB has approved ICR 2040-0185 for use with this rule and authorized the inclusion of the OMB control number in 40 CFR part 9.

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. EPA is amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this rule.

D. 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.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The UMRA excludes from the definition of "Federal intergovernmental mandate" duties that arise from conditions of Federal assistance. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments are not subject to this rule, therefore it will not significantly or uniquely affect them. Many small governments will actually benefit through receipt of assistance from the DWSRF program. Thus, today's rule is not subject to the requirements of section 203 of the UMRA.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) 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.

F. 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 this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective August 7, 2000.

G. 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 interim final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This interim final rule mainly codifies and makes minor changes to the DWSRF Program Final Guidelines under which the program has been operating since 1997. Apart from the minor changes, this rule adds new provisions that increase State flexibility, so it does not have federalism implications as that phrase is defined for purposes of Executive Order 13132. Further, because this is a rule that primarily conditions the use of Federal assistance, it does not impose substantial direct compliance costs on the States. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with representatives of State governments in developing this rule. Specifically, members of a State/EPA SRF Work Group comprised of State DWSRF managers, State CWSRF managers, and managers of State financial agencies were given the opportunity to review and comment on drafts of this rule. In addition, stakeholders, including representatives from State government agencies and State government organizations, were given an opportunity to comment on a draft of the rule which was posted on the Internet for public comment. A summary of the concerns raised during that consultation and EPA's response to those concerns is provided in section VII. of this preamble.

H. Executive Order 13045: Children's Health

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This interim final rule is not subject to Executive Order 13045 because it is not "economically significant" as defined under Executive Order 12866. Further, it does not concern an environmental health or safety risk that

EPA has reason to believe may have a disproportionate effect on children.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

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

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments, nor does it impose substantial direct compliance costs on them. This rule only applies to each of the 50 States and the Commonwealth of Puerto Rico that receive capitalization grants and are authorized to establish a Fund under section 1452 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300j-12. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

J. Executive Order 12898: Environmental Justice

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. 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.

No action from this rule will have a disproportionately high and adverse human health and environmental effect on any segment of the population. In addition, this rule does not impose substantial direct compliance costs on those communities. Accordingly, the requirements of Executive Order 12898 do not apply.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 35

Environmental protection, Drinking water, Grant programs—environmental protection, Public health, Safe drinking water act, State revolving funds, Water supply.

Dated: July 31, 2000.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, EPA is proposing to amend Title 40, chapter 1 of the Code of Federal Regulations to read as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33

U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended under the indicated heading by adding new entries in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

	40 CFR citation	OMB control No.
*	*	*
Drinking Water State Revolving Funds.	*	*
*	*	*
35.3540 (c)		2040–0185
35.3545 (a)–(f)		2040–0185
35.3550 (a)–(p)		2040–0185
35.3555 (a)–(d)		2040–0185
35.3560 (a), (d)–(g)		2040–0185
35.3565 (a)–(f)		2040–0185
35.3570 (a)–(d)		2040–0185
35.3575 (a)–(e)		2040–0185
35.3580 (a)–(h)		2040–0185
35.3585 (b)–(c)		2040–0185
*	*	*

PART 35—STATE AND LOCAL ASSISTANCE

3. Part 35 is amended by adding Subpart L to read as follows:

Subpart L—Drinking Water State Revolving Funds

- Sec.
- 35.3500 Purpose, policy, and applicability.
- 35.3505 Definitions.
- 35.3510 Establishment of the DWSRF program.
- 35.3515 Allotment and withholdings of funds.
- 35.3520 Systems, projects, and project-related costs eligible for assistance from the Fund.
- 35.3525 Authorized types of assistance from the Fund.
- 35.3530 Limitations on uses of the Fund.
- 35.3535 Authorized set-aside activities.
- 35.3540 Requirements for funding set-aside activities.
- 35.3545 Capitalization grant agreement.
- 35.3550 Specific capitalization grant agreement requirements.

- 35.3555 Intended Use Plan (IUP).
- 35.3560 General payment and cash draw rules.
- 35.3565 Specific cash draw rules for authorized types of assistance from the Fund.
- 35.3570 Reports and audits.
- 35.3575 Application of Federal cross-cutting authorities (cross-cutters).
- 35.3580 Environmental review requirements.
- 35.3585 Compliance assurance procedures.

Appendix A to Subpart L—Criteria for evaluating a State's proposed NEPA-like process.

Subpart L—Drinking Water State Revolving Funds

Authority: Section 1452 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300j–12.

§ 35.3500 Purpose, policy, and applicability.

(a) This subpart codifies and implements requirements for the

national Drinking Water State Revolving Fund program under section 1452 of the Safe Drinking Water Act, as amended in 1996. It applies to States (*i.e.*, each of the 50 States and the Commonwealth of Puerto Rico) which receive capitalization grants and are authorized to establish a Fund under section 1452. The purpose of this subpart is to ensure that each State's program is designed and operated in such a manner as to further the public health protection objectives of the Safe Drinking Water Act, promote the efficient use of all funds, and ensure that the Fund corpus is available in perpetuity for providing financial assistance to public water systems.

(b) This subpart supplements section 1452 of the Safe Drinking Water Act by codifying statutory and program requirements that were published in the Final Guidelines for the Drinking Water State Revolving Fund program (EPA 816–R–97–005) signed by the Assistant Administrator for Water on February 28,

1997, as well as in subsequent policies. This subpart also supplements general grant regulations at 40 CFR part 31 which contain administrative requirements that apply to governmental recipients of Environmental Protection Agency (EPA) grants and subgrants. EPA will not impose additional major program requirements without providing an opportunity for affected parties to comment.

(c) EPA intends to implement the national Drinking Water State Revolving Fund program in a manner that preserves for States a high degree of flexibility to operate their programs in accordance with each State's unique needs and circumstances. To the maximum extent practicable, EPA also intends to administer the financial aspects of the national Drinking Water State Revolving Fund program in a manner that is consistent with the policies and procedures of the national Clean Water State Revolving Fund program established under Title VI of the Clean Water Act, as amended, 33 U.S.C. 1381–1387.

§ 35.3505 Definitions.

The following definitions apply to terms used in this subpart:

Act. The Safe Drinking Water Act (Public Law 93–523), as amended in 1996 (Public Law 104–182). 42 U.S.C. 300f *et seq.*

Administrator. The Administrator of the EPA or an authorized representative.

Allotment. Amount available to a State from funds appropriated by Congress to carry out section 1452 of the Act.

Automated Clearing House (ACH). A Federal payment mechanism that transfers cash to recipients of Federal assistance using electronic transfers from the Treasury through the Federal Reserve System.

Binding commitment. A legal obligation by the State to an assistance recipient that defines the terms for assistance from the Fund.

Capitalization grant. An award by EPA of funds to a State for purposes of capitalizing that State's Fund and for other purposes authorized in section 1452 of the Act.

Cash draw. The transfer of cash from the Treasury through the ACH to the DWSRF program. Upon a State's request for a cash draw, the Treasury will transfer funds to the DWSRF program account established in the State's bank.

CWSRF program. Each State's clean water state revolving fund program authorized under Title VI of the Clean Water Act, as amended, 33 U.S.C. 1381–1387.

Disadvantaged community. The entire service area of a public water system that meets affordability criteria established by the State after public review and comment.

Disbursement. The transfer of cash from the DWSRF program account established in the State's bank to an assistance recipient.

DWSRF program. Each State's drinking water state revolving fund program authorized under section 1452 of the Act, as amended, 42 U.S.C. 300j–12. This term includes the Fund and set-asides.

Fund. A revolving account into which a State deposits DWSRF program funds (e.g., capitalization grants, State match, repayments, net bond proceeds, interest earnings, etc.) for the purposes of providing loans and other types of assistance for drinking water infrastructure projects.

Intended Use Plan (IUP). A document prepared annually by a State, after public review and comment, which identifies intended uses of all DWSRF program funds and describes how those uses support the overall goals of the DWSRF program.

Net bond proceeds. The funds raised from the sale of the bonds minus issuance costs (e.g., the underwriting discount, underwriter's legal counsel fees, bond counsel fee, and other costs incidental to the bond issuance).

Payment. An action taken by EPA to increase the amount of funds available for cash draw through the ACH. A payment is not a transfer of cash to the State, but an authorization by EPA to make capitalization grant funds available for transfer to a State after the State submits a cash draw request.

Public water system. A system as defined in 40 CFR 141.2. A public water system is either a "community water system" or a "noncommunity water system" as defined in 40 CFR 141.2.

Regional Administrator (RA). The Administrator of the appropriate Regional Office of the EPA or an authorized representative of the Regional Administrator.

Set-asides. State and local activities identified in sections 1452(g)(2) and (k) of the Act for which a portion of a capitalization grant may be used.

Small system. A public water system that regularly serves 10,000 or fewer persons.

State. Each of the 50 States and the Commonwealth of Puerto Rico, which receive capitalization grants and are authorized to establish a Fund under section 1452 of the Act.

§ 35.3510 Establishment of the DWSRF program.

(a) *General.* To be eligible to receive a capitalization grant, a State must establish a Fund and comply with the other requirements of section 1452 of the Act and this subpart.

(b) *Administration.* Capitalization grants must be awarded to an agency of the State that is authorized to enter into capitalization grant agreements with EPA, accept capitalization grant awards made under section 1452 of the Act, and otherwise manage the Fund in accordance with the requirements and objectives of the Act and this subpart. The State agency that is awarded the capitalization grant (i.e., grantee) is accountable for the use of the funds provided in the capitalization grant agreement under general grant regulations at 40 CFR part 31.

(1) The authority to establish assistance priorities and to carry out oversight and related activities of the DWSRF program, other than financial administration of the Fund, must reside with the State agency having primary responsibility for administration of the State's public water system supervision (PWSS) program (i.e., primacy) after consultation with other appropriate State agencies.

(2) If a State is eligible to receive a capitalization grant but does not have primacy, the Governor will determine which State agency will have the authority to establish priorities for financial assistance from the Fund. Evidence of the Governor's determination must be included with the capitalization grant application.

(3) If more than one State agency participates in implementation of the DWSRF program, the roles and responsibilities of each agency must be described in a Memorandum of Understanding or interagency agreement.

(c) *Combined financial administration.* A State may combine the financial administration of the Fund with the financial administration of any other revolving fund established by the State if otherwise not prohibited by State law under which the Fund was established. A State must assure that all monies in the Fund, including capitalization grants, State match, net bond proceeds, loan repayments, and interest are separately accounted for and used solely for the purposes specified in section 1452 of the Act and this subpart. Funds available from the administration and technical assistance set-aside may not be used for combined financial administration of any other revolving fund.

(d) *Use of funds.* (1) Assistance provided to a public water system from the DWSRF program may be used only for expenditures that will facilitate compliance with national primary drinking water regulations applicable under section 1412 or otherwise significantly further the public health protection objectives of the Act.

(2) The inability or failure of any public water system to receive assistance from the DWSRF program, or any delay in obtaining assistance, does not alter the obligation of the system to comply in a timely manner with all applicable drinking water standards and requirements of section 1452 of the Act.

§ 35.3515 Allotment and withholdings of funds.

(a) *Allotment.* (1) *General.* Each State will receive a minimum of one percent of the funds available for allotment to all of the States.

(2) *Allotment formula.* Funds available to States from fiscal year 1998 appropriations and subsequent appropriations are allotted according to a formula that reflects the infrastructure needs of public water systems identified in the most recent Needs Survey submitted in accordance with section 1452(h) of the Act.

(3) *Period of availability.* Funds are available for obligation to States during the fiscal year in which they are authorized and during the following fiscal year. The amount of any allotment not obligated to a State by EPA at the end of this period of availability will be reallocated to eligible States based on the formula originally used to allot these funds, except that the Administrator may reserve up to 10 percent of any funds available for reallocation to provide additional assistance to Indian Tribes. In order to be eligible to receive reallocated funds, a State must have been obligated all funds it is eligible to receive from EPA during the period of availability.

(4) *Loss of primacy.* The following provisions do not apply to any State that did not have primacy as of August 6, 1996:

(i) A State may not receive a capitalization grant from allotments that have been made if the State had primacy and subsequently loses primacy.

(ii) For a State that loses primacy, the Administrator may reserve funds from the State's allotment for use by EPA to administer primacy in that State. The balance of the funds not used by EPA to administer primacy will be reallocated to the other States.

(iii) A State will be eligible for future allotments from funds appropriated in

the next fiscal year after primacy is restored.

(b) *Withholdings.*—(1) *General.* EPA will withhold funds under each of the following provisions:

(i) *Capacity development authority.* EPA will withhold 20 percent of a State's allotment from any State that has not obtained the legal authority or other means to ensure that all new community water systems and new nontransient, noncommunity water systems commencing operations after October 1, 1999, demonstrate technical, financial, and managerial capacity with respect to each national primary drinking water regulation in effect, or likely to be in effect, on the date of commencement of operations. The determination of withholding will be based on an assessment of the status of the State program as of October 1 of the fiscal year for which the funds were allotted.

(ii) *Capacity development strategy.* EPA will withhold funds from any State unless the State is developing and implementing a strategy to assist public water systems in acquiring and maintaining technical, financial, and managerial capacity. The amount of a State's allotment that will be withheld is 10 percent for fiscal year 2001, 15 percent for fiscal year 2002, and 20 percent for each subsequent fiscal year. The determination of withholding will be based on an assessment of the status of the State strategy as of October 1 of the fiscal year for which the funds were allotted. Decisions of a State regarding any particular public water system as part of a capacity development strategy are not subject to review by EPA and may not serve as a basis for withholding funds.

(iii) *Operator certification program.* Beginning on February 5, 2001, EPA will withhold 20 percent of a State's allotment unless the State has adopted and is implementing a program for certifying operators of community and nontransient, noncommunity public water systems that meets the requirements of section 1419 of the Act. The determination of withholding will be based on an assessment of the status of the State program for each fiscal year.

(2) *Maximum withholdings.* The maximum amount of funds that will be withheld if a State fails to meet the requirements of both the capacity development authority and the capacity development strategy provisions is 20 percent of the allotment in any fiscal year. The maximum amount of funds that will be withheld if a State fails to meet the requirements of the operator certification program provision and either the capacity development

authority provision or the capacity development strategy provision is 40 percent of the allotment in any fiscal year.

(3) *Reallotment of withheld funds.* The Administrator will reallocate withheld funds to eligible States based on the formula originally used to allot these funds. In order to be eligible to receive reallocated funds under the withholding provisions, a State must have been obligated all funds it is eligible to receive from EPA during the period of availability. A State that has funds withheld under any one of the withholding provisions in paragraphs (b)(1)(i) through (b)(1)(iii) of this section is not eligible to receive reallocated funds made available by that provision.

(4) *Termination of withholdings.* A withholding will cease to apply to funds appropriated in the next fiscal year after a State complies with the specific provision under which funds were withheld.

§ 35.3520 Systems, projects, and project-related costs eligible for assistance from the Fund.

(a) *Eligible systems.* Assistance from the Fund may only be provided to:

(1) Privately-owned and publicly-owned community water systems and non-profit noncommunity water systems.

(2) Projects that will result in the creation of a community water system in accordance with paragraph (b)(2)(vi) of this section.

(3) Systems referred to in section 1401(4)(B) of the Act for the purposes of point of entry or central treatment under section 1401(4)(B)(i)(III).

(b) *Eligible projects.*—(1) *General.* Projects that address present or prevent future violations of health-based drinking water standards are eligible for assistance. These include projects needed to maintain compliance with existing national primary drinking water regulations for contaminants with acute and chronic health effects. Projects to replace aging infrastructure are eligible for assistance if they are needed to maintain compliance or further the public health protection objectives of the Act.

(2) Only the following project categories are eligible for assistance from the Fund:

(i) *Treatment.* Examples of projects include installation or upgrade of facilities to improve the quality of drinking water to comply with primary or secondary standards and point of entry or central treatment under section 1401(4)(B)(i)(III) of the Act.

(ii) *Transmission and distribution.* Examples of projects include

installation or replacement of transmission and distribution pipes to improve water pressure to safe levels or to prevent contamination caused by leaks or breaks in the pipes.

(iii) *Source*. Examples of projects include rehabilitation of wells or development of eligible sources to replace contaminated sources.

(iv) *Storage*. Examples of projects include installation or upgrade of eligible storage facilities, including finished water reservoirs, to prevent microbiological contaminants from entering a public water system.

(v) *Consolidation*. Eligible projects are those needed to consolidate water supplies where, for example, a supply has become contaminated or a system is unable to maintain compliance for technical, financial, or managerial reasons.

(vi) *Creation of new systems*. Eligible projects are those that, upon completion, will create a community water system to address existing public health problems with serious risks caused by unsafe drinking water provided by individual wells or surface water sources. Eligible projects are also those that create a new regional community water system by consolidating existing systems that have technical, financial, or managerial difficulties. Projects to address existing public health problems associated with individual wells or surface water sources must be limited in scope to the specific geographic area affected by contamination. Projects that create new regional community water systems by consolidating existing systems must be limited in scope to the service area of the systems being consolidated. A project must be a cost-effective solution to addressing the problem. A State must ensure that the applicant has given sufficient public notice to potentially affected parties and has considered alternative solutions to addressing the problem. Capacity to serve future population growth cannot be a substantial portion of a project.

(c) *Eligible project-related costs*. In addition to costs needed for the project itself, the following project-related costs are eligible for assistance from the Fund:

(1) Costs for planning and design and associated pre-project costs. A State that makes a loan for only planning and design is not required to provide assistance for completion of the project.

(2) Costs for the acquisition of land only if needed for the purposes of locating eligible project components. The land must be acquired from a willing seller.

(3) Costs for restructuring systems that are in significant noncompliance with

any national primary drinking water regulation or variance or that lack the technical, financial, and managerial capability to ensure compliance with the requirements of the Act, unless the systems are ineligible under paragraph (d)(2) or (d)(3) of this section.

(d) *Ineligible systems*. Assistance from the Fund may not be provided to:

(1) Federally-owned public water systems and for-profit noncommunity water systems.

(2) Systems that lack the technical, financial, and managerial capability to ensure compliance with the requirements of the Act, unless the assistance will ensure compliance and the owners or operators of the systems agree to undertake feasible and appropriate changes in operations to ensure compliance over the long-term.

(3) Systems that are in significant noncompliance with any national primary drinking water regulation or variance, unless:

(i) The purpose of the assistance is to address the cause of the significant noncompliance and will ensure that the systems return to compliance; or

(ii) The purpose of the assistance is unrelated to the cause of the significant noncompliance and the systems are on enforcement schedules (for maximum contaminant level and treatment technique violations) or have compliance plans (for monitoring and reporting violations) to return to compliance.

(e) *Ineligible projects*. The following projects are ineligible for assistance from the Fund:

(1) Dams or rehabilitation of dams.

(2) Water rights, except if the water rights are owned by a system that is being purchased through consolidation as part of a capacity development strategy.

(3) Reservoirs or rehabilitation of reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are on the property where the treatment facility is located.

(4) Projects needed primarily for fire protection.

(5) Projects needed primarily to serve future population growth. Projects must be sized only to accommodate a reasonable amount of population growth expected to occur over the useful life of the facility.

(6) Projects that have received assistance from the national set-aside for Indian Tribes and Alaska Native Villages under section 1452(i) of the Act.

(f) *Ineligible project-related costs*. The following project-related costs are ineligible for assistance from the Fund:

(1) Laboratory fees for routine compliance monitoring.

(2) Operation and maintenance expenses.

§ 35.3525 Authorized types of assistance from the Fund.

A State may only provide the following types of assistance from the Fund:

(a) *Loans*. (1) A State may make loans at or below the market interest rate, including zero interest rate loans. Loans may be awarded only if:

(i) An assistance recipient begins annual repayment of principal and interest no later than one year after project completion. A project is completed when operations are initiated or are capable of being initiated.

(ii) A recipient completes loan repayment no later than 20 years after project completion except as provided in paragraph (b)(3) of this section.

(iii) A recipient establishes a dedicated source of revenue for repayment of the loan which is consistent with local ordinances and State laws or, for privately-owned systems, a recipient demonstrates that there is adequate security to assure repayment of the loan.

(2) A State may include eligible project reimbursement costs within loans if:

(i) A system received approval, authorization to proceed, or any similar action by a State prior to initiation of project construction and the construction costs were incurred after such State action; and

(ii) The project met all of the requirements of this subpart and was on the State's fundable list, developed using a priority system approved by EPA. A project on the comprehensive list which is funded when a project on the fundable list is bypassed using the State's bypass procedures in accordance with § 35.3555(c)(2)(ii) may be eligible for reimbursement of costs incurred after the system has been informed that it will receive funding.

(3) A State may include eligible planning and design and other associated pre-project costs within loans regardless of when the costs were incurred.

(4) All payments of principal and interest on each loan must be credited to the Fund.

(5) Of the total amount available for assistance from the Fund each year, a State must make at least 15 percent available solely for providing loan assistance to small systems, to the extent such funds can be obligated for eligible projects. A State that provides assistance in an amount that is greater

than 15 percent of the available funds in one year may credit the excess toward the 15 percent requirement in future years.

(6) A State may provide incremental assistance for a project (e.g., for a particularly large, expensive project) over a period of years.

(b) *Assistance to disadvantaged communities.* (1) A State may provide loan subsidies (e.g., loans which include principal forgiveness, negative interest rate loans) to benefit communities meeting the State's definition of "disadvantaged" or which the State expects to become "disadvantaged" as a result of the project. Loan subsidies in the form of reduced interest rate loans that are at or above zero percent do not fall under the 30 percent allowance described in paragraph (b)(2) of this section.

(2) A State may take an amount equal to no more than 30 percent of the amount of a particular fiscal year's capitalization grant to provide loan subsidies to disadvantaged communities. If a State does not take the entire 30 percent allowance associated with a particular fiscal year's capitalization grant, it cannot reserve the authority to take the remaining balance of the allowance from future capitalization grants. In addition, a State must:

(i) Indicate in the Intended Use Plan (IUP) the amount of the allowance it is taking for loan subsidies;

(ii) Commit capitalization grant and required State match dollars taken for loan subsidies in accordance with the binding commitment requirements in § 35.3550(e); and

(iii) Commit any other dollars (e.g., principal and interest repayments, investment earnings) taken for loan subsidies to projects over the same time period during which binding commitments are made for the capitalization grant from which the allowance was taken.

(3) A State may extend the term for a loan to a disadvantaged community, provided that a recipient completes loan repayment no later than 30 years after project completion and the term of the loan does not exceed the expected design life of the project.

(c) *Refinance or purchase of local debt obligations.*—(1) *General.* A State may buy or refinance local debt obligations of municipal, intermunicipal, or interstate agencies where the debt obligation was incurred and the project was initiated after July 1, 1993. Projects must have met the eligibility requirements under section 1452 of the Act and this subpart to be

eligible for refinancing. Privately-owned systems are not eligible for refinancing.

(2) *Multi-purpose debt.* If the original debt for a project was in the form of a multi-purpose bond incurred for purposes in addition to eligible purposes under section 1452 of the Act and this subpart, a State may provide refinancing only for the eligible portion of the debt, not the entire debt.

(3) *Refinancing and State match.* If a State has credited repayments of loans made under a pre-existing State loan program as part of its State match, the State cannot also refinance the projects under the DWSRF program. If the State has already counted certain projects toward its State match which it now wants to refinance, the State must provide replacement funds for the amounts previously credited as match.

(d) *Purchase insurance or guarantee for local debt obligations.* A State may provide assistance by purchasing insurance or guaranteeing a local debt obligation to improve credit market access or to reduce interest rates. Assistance of this type is limited to local debt obligations that are undertaken to finance projects eligible for assistance under section 1452 of the Act and this subpart.

(e) *Revenue or security for Fund debt obligations (leveraging).* A State may use Fund assets as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State in order to increase the total amount of funds available for providing assistance. The net proceeds of the sale of the bonds must be deposited into the Fund and must be used for providing loans and other assistance to finance projects eligible under section 1452 of the Act and this subpart.

§ 35.3530 Limitations on uses of the Fund.

(a) *Earn interest.* A State may earn interest on monies deposited into the Fund prior to disbursement of assistance (e.g., on reserve accounts used as security or guarantees). Monies deposited must not remain in the Fund primarily to earn interest. Amounts not required for current obligation or expenditure must be invested in interest bearing obligations.

(b) *Program administration.* A State may not use monies deposited into the Fund to cover its program administration costs. In addition to using the funds available from the administration and technical assistance set-aside under § 35.3535(b), a State may use the following methods to cover its program administration and other program costs.

(1) A State may use the proceeds of bonds guaranteed by the Fund to absorb expenses incurred issuing the bonds. The net proceeds of the bonds must be deposited into the Fund.

(2) A State may assess fees on an assistance recipient which are paid directly by the recipient and are not included as principal in a loan as allowed in paragraph (b)(3) of this section. These fees, which include interest earned on fees, must be deposited into the Fund or into an account outside of the Fund. If the fees are deposited into the Fund, they are subject to the authorized uses of the Fund. If the fees are deposited into an account outside of the Fund, they must be used for program administration, other purposes for which capitalization grants can be awarded under section 1452, State match under sections 1452(e) and (g)(2) of the Act, or combined financial administration of the DWSRF program and CWSRF program Funds where the programs are administered by the same State agency.

(3) A State may assess fees on an assistance recipient which are included as principal in a loan. These fees, which include interest earned on fees, must be deposited into the Fund or into an account outside of the Fund. If the fees are deposited into the Fund, they are subject to the authorized uses of the Fund. If the fees are deposited into an account outside of the Fund, they must be used for program administration or other purposes for which capitalization grants can be awarded under section 1452. Fees included as principal in a loan cannot be used for State match under sections 1452(e) and (g)(2) of the Act or combined financial administration of the DWSRF program and CWSRF program Funds. Additionally, fees included as principal in a loan:

(i) Cannot be assessed on a disadvantaged community which receives a loan subsidy provided from the 30 percent allowance in § 35.3525(b)(2);

(ii) Cannot cause the effective rate of a loan (which includes both interest and fees) to exceed the market rate; and

(iii) Cannot be assessed if the effective rate of a loan could reasonably be expected to cause a system to fail to meet the technical, financial, and managerial capability requirements under section 1452 of the Act.

(c) *Transfers.* The Governor of a State, or a State official acting pursuant to authorization from the Governor, may transfer an amount equal to 33 percent of a fiscal year's DWSRF program capitalization grant to the CWSRF program or an equivalent amount from

the CWSRF program to the DWSRF program. The following conditions apply:

(1) When a State initially decides to transfer funds:

(i) The State's Attorney General, or someone designated by the Attorney General, must sign or concur in a certification for the DWSRF program and the CWSRF program that State law permits the State to transfer funds; and

(ii) The Operating Agreements or other parts of the capitalization grant agreements for the DWSRF program and the CWSRF program must be amended to detail the method the State will use to transfer funds.

(2) A State may not use the transfer provision to acquire State match for either program or use transferred funds to secure or repay State match bonds.

(3) Funds may be transferred after one year has elapsed since a State established its Fund (*i.e.*, one year after the State has received its first DWSRF program capitalization grant for projects), and may include an amount equal to the allowance associated with its fiscal year 1997 capitalization grant.

(4) A State may reserve the authority to transfer funds in future years.

(5) Funds may be transferred on a net basis between the DWSRF program and CWSRF program, provided that the 33 percent transfer allowance associated with DWSRF program capitalization grants received is not exceeded.

(6) Funds may not be transferred or reserved after September 30, 2001.

(d) *Cross-collateralization.* A State may combine the Fund assets of the DWSRF program and CWSRF program as security for bond issues to enhance the lending capacity of one or both of the programs. The following conditions apply:

(1) When a State initially decides to cross-collateralize:

(i) The State's Attorney General, or someone designated by the Attorney General, must sign or concur in a certification for the DWSRF program and the CWSRF program that State law permits the State to cross-collateralize the Fund assets of the DWSRF program and CWSRF program; and

(ii) The Operating Agreements or other parts of the capitalization grant agreements for the DWSRF program and the CWSRF program must be amended to detail the method the State will use to cross-collateralize.

(2) The proceeds generated by the issuance of bonds must be allocated to the purposes of the DWSRF program and CWSRF program in the same proportion as the assets from the Funds that are used as security for the bonds. A State must demonstrate at the time of

bond issuance that the proportionality requirements have been or will be met. If a default should occur, and the Fund assets from one program are used for debt service in the other program to cure the default, the security would no longer need to be proportional.

(3) A State may not combine the Fund assets of the DWSRF program and the CWSRF program as security for bond issues to acquire State match for either program or use the assets of one program to secure match bonds for the other program.

(4) The debt service reserves for the DWSRF program and the CWSRF program must be accounted for separately.

(5) Loan repayments must be made to the respective program from which the loan was made.

§ 35.3535 Authorized set-aside activities.

(a) *General.* (1) A State may use a portion of its capitalization grants for the set-aside categories described in paragraphs (b) through (e) of this section, provided that the amount of set-aside funding does not exceed the ceilings specified in this section.

(2) A State may not use set-aside funds for those projects or project-related costs listed in § 35.3520(b), (c), (e), and (f), with the following exceptions:

(i) Project planning and design costs for small systems; and

(ii) Costs for restructuring a system as part of a capacity development strategy.

(b) *Administration and technical assistance.* A State may use up to 4 percent of its allotment to cover the reasonable costs of administering the DWSRF program and to provide technical assistance to public water systems.

(c) *Small systems technical assistance.* A State may use up to 2 percent of its allotment to provide technical assistance to small systems. A State may use these funds for activities such as supporting a State technical assistance team or contracting with outside organizations or other parties to provide technical assistance to small systems.

(d) *State program management.* A State may use up to 10 percent of its allotment for State program management activities.

(1) This set-aside may only be used for the following activities:

(i) To administer the State PWSS program;

(ii) To administer or provide technical assistance through source water protection programs (including a Class V Underground Injection Control Program), except for enforcement actions;

(iii) To develop and implement a capacity development strategy; and

(iv) To develop and implement an operator certification program.

(2) Match requirement. A State must provide a dollar for dollar match for expenditures made under this set-aside.

(i) The match must be provided at the time of the capitalization grant award or in the same year that funds for this set-aside are expected to be expended in accordance with a workplan approved by EPA.

(ii) A State is authorized to use the amount of State funds it expended on its PWSS program in fiscal year 1993 (including PWSS match) as a credit toward meeting its match requirement. The value of this credit can be up to, but not greater than, 50 percent of the amount of match that is required. After determining the value of the credit that it is eligible to receive, a State must provide the additional funds necessary to meet the remainder of the match requirement. The source of these additional funds can be State funds (excluding PWSS match) or documented in-kind services.

(e) *Local assistance and other State programs.* A State may use up to 15 percent of its capitalization grant to assist in the development and implementation of local drinking water protection initiatives and other State programs. No more than 10 percent of the capitalization grant amount can be used for any one authorized activity.

(1) This set-aside may only be used for the following activities:

(i) A State may provide assistance only in the form of loans to community water systems and non-profit noncommunity water systems to acquire land or conservation easements from willing sellers or grantors. A system must demonstrate how the purchase of land or easements will protect the source water of the system from contamination and ensure compliance with national primary drinking water regulations. A State must develop a priority setting process for determining what parcels of land or easements to purchase or use an established priority setting process that meets the same goals. A State must seek public review and comment on its priority setting process and must identify the systems that received loans and include a description of the specific parcels of land or easements purchased in the Biennial Report.

(ii) A State may provide assistance only in the form of loans to community water systems to assist in implementing voluntary, incentive-based source water protection measures in areas delineated under a source water assessment

program under section 1453 of the Act and for source water petitions under section 1454 of the Act. A State must develop a list of systems that may receive loans, giving priority to activities that facilitate compliance with national primary drinking water regulations applicable to the systems or otherwise significantly further the health protection objectives of the Act. A State must seek public review and comment on its priority setting process and its list of systems that may receive loans.

(iii) A State may make expenditures to establish and implement wellhead protection programs under section 1428 of the Act.

(iv) A State may provide assistance, including technical and financial assistance, to public water systems as part of a capacity development strategy under section 1420(c) of the Act.

(v) A State may make expenditures from its fiscal year 1997 capitalization grant to delineate and assess source water protection areas for public water systems under section 1453 of the Act. Assessments include the identification of potential sources of contamination within the delineated areas. These assessment activities are limited to the identification of contaminants regulated under the Act or unregulated contaminants that a State determines may pose a threat to public health. A State must obligate funds within 4 years of receiving its fiscal year 1997 capitalization grant.

(2) A State may make loans under this set-aside only if an assistance recipient begins annual repayment of principal and interest no later than one year after completion of the activity and completes loan repayment no later than 20 years after completion of the activity. A State must deposit repayments into the Fund or into a separate account dedicated for this set-aside. The separate account is subject to the same management oversight requirements as the Fund. Amounts deposited into the Fund are subject to the authorized uses of the Fund.

§ 35.3540 Requirements for funding set-aside activities.

(a) *General.* If a State makes a grant or enters into a cooperative agreement with an assistance recipient to conduct set-aside activities, the recipient must comply with general grant regulations at 40 CFR part 30 or part 31, as appropriate.

(b) *Set-aside accounts.* A State must maintain separate and identifiable accounts for the portion of its capitalization grant to be used for set-aside activities.

(c) *Workplans.*—(1) *General.* A State must submit detailed annual or multi-year workplans to EPA for approval describing how set-aside funds will be expended. For the administration and technical assistance set-aside under § 35.3535(b), the State is only required to submit a workplan describing how it will expend funds needed to provide technical assistance to public water systems. In order to ensure that funds are expended efficiently, multi-year workplan terms negotiated with EPA must be less than four years, unless a longer term is approved by EPA.

(2) *Submitting workplans.* A State must submit workplans in accordance with a schedule negotiated with EPA. If a schedule has not been negotiated, the State must submit workplans no later than 90 days after the capitalization grant award. If a State does not meet the deadline for submitting its workplans, the set-aside funds that were required to be described in the workplans must be transferred to the Fund to be used for projects.

(3) *Content.* Workplans must at a minimum include:

(i) The annual funding amount in dollars and as a percentage of the State allotment or capitalization grant;

(ii) The projected number of work years needed for implementing each set-aside activity;

(iii) The goals and objectives, outputs, and deliverables for each set-aside activity;

(iv) A schedule for completing activities under each set-aside activity;

(v) Identification and responsibilities of the agencies involved in implementing each set-aside activity, including activities proposed to be conducted by a third party; and

(vi) A description of the evaluation process to assess the success of work funded under each set-aside activity.

(4) *Amending workplans.* If a State changes the scope of work from what was originally described in its workplans, it must amend the workplans and submit them to EPA for approval.

(d) *Reserving set-aside funds.* (1) A State may reserve set-aside funds from a capitalization grant and expend them over a period of time, provided that the State identifies the amount of funds reserved in the IUP and describes the use of the funds in workplans approved by EPA. For the administration and technical assistance set-aside under § 35.3535(b), the State is only required to submit a workplan to reserve funds needed to provide technical assistance to public water systems.

(2) With the exception of the local assistance and other State programs set-

aside under § 35.3535(e), a State may reserve the authority to take from future capitalization grants those set-aside funds that it has not included in workplans. The State must identify in the IUP the amount of authority reserved from a capitalization grant for future use.

(e) *Fund and set-aside account transfers.* (1) A State may transfer funds among set-aside categories described in § 35.3535(b) through (e) and among activities within these categories, provided that set-aside ceilings are not exceeded.

(2) A State may transfer funds between the Fund and set-asides, provided that set-aside ceilings are not exceeded. Set-aside funds may be transferred at any time to the Fund. If a State has taken payment for the set-aside funds to be transferred to the Fund, it must make binding commitments for these funds within one year of the transfer. Monies intended for the Fund may be transferred to set-asides only if the State has not yet taken a payment that includes those funds to be transferred in accordance with the payment schedule negotiated with EPA.

(3) The capitalization grant agreement must be amended prior to any transfer among the set-aside categories or any transfer between the Fund and set-asides.

§ 35.3545 Capitalization grant agreement.

(a) *General.* A State must submit a capitalization grant application to EPA in order to receive a capitalization grant award. Approval of an application results in EPA and the State entering into a capitalization grant agreement which is the principal instrument by which the State commits to manage the DWSRF program in accordance with the requirements of section 1452 of the Act and this subpart.

(b) *Content.* In addition to the items listed in paragraphs (c) through (f) of this section, the capitalization grant agreement must contain or incorporate by reference the Application for Federal Assistance (EPA Form 424) and other related forms, IUP, negotiated payment schedule, State environmental review process (SERP), demonstrations of the specific capitalization grant agreement requirements listed in § 35.3550, and other documentation required by the Regional Administrator (RA). The capitalization grant agreement must also define the types of performance measures, reporting requirements, and oversight responsibilities that will be required to determine compliance with section 1452 of the Act.

(c) *Operating agreement.* At the option of a State, the framework and

procedures of the DWSRF program that are not expected to change annually may be described in an Operating Agreement. The Operating Agreement may be amended if the State negotiates the changes with EPA.

(d) *Attorney General certification.* With the capitalization grant application, the State's Attorney General, or someone designated by the Attorney General, must sign or concur in a certification that:

(1) The authority establishing the DWSRF program and the powers it confers are consistent with State law;

(2) The State may legally bind itself to the proposed terms of the capitalization grant agreement; and

(3) An agency of the State is authorized to enter into capitalization grant agreements with EPA, accept capitalization grant awards made under section 1452 of the Act, and otherwise manage the Fund in accordance with the requirements and objectives of the Act and this subpart.

(e) *Roles and responsibilities of agencies.* If more than one State agency participates in the implementation of the DWSRF program, the State must describe the roles and responsibilities of each agency in the capitalization grant application and include a Memorandum of Understanding or interagency agreement describing these roles and responsibilities.

(f) *Process for evaluating capability and compliance.* A State must include in the capitalization grant application a description of the following:

(1) The process it will use to assess the technical, financial, and managerial capability of all systems requesting assistance to ensure that the systems are in compliance with the requirements of the Act.

(2) If a State provides assistance to systems that lack technical, financial, and managerial capability, the process it will use to ensure that the systems undertake feasible and appropriate changes in operations to comply with the requirements of the Act over the long-term.

(3) If a State provides assistance to systems in significant noncompliance with any national primary drinking water regulation or variance, the process it will use to ensure that the systems return to compliance.

§ 35.3550 Specific capitalization grant agreement requirements.

(a) *General.* A State must agree to comply with this subpart, the general grant regulations at 40 CFR part 31, and specific conditions of the grant. A State must also agree to the following requirements and, in some cases,

provide documentation as part of the capitalization grant application.

(b) *Comply with State statutes and regulations.* A State must agree to comply with all State statutes and regulations that are applicable to DWSRF program funds including capitalization grant funds, State match, interest earnings, net bond proceeds, repayments, and funds used for set-aside activities.

(c) *Demonstrate technical capability.* A State must agree to provide documentation demonstrating that it has adequate personnel and resources to establish and manage the DWSRF program.

(d) *Accept payments.* A State must agree to accept capitalization grant payments in accordance with a payment schedule negotiated between EPA and the State.

(e) *Make binding commitments.* A State must agree to enter into binding commitments with assistance recipients to provide assistance from the Fund.

(1) Binding commitments must be made in an amount equal to the amount of each capitalization grant payment and accompanying State match that is deposited into the Fund and must be made within one year after the receipt of each grant payment.

(2) A State may make binding commitments for more than the required amount and credit the excess towards the binding commitment requirements of subsequent grant payments.

(3) If a State is concerned about its ability to comply with the binding commitment requirement, it must notify the RA and propose a revised payment schedule for future grant payments.

(f) *Deposit of funds.* A State must agree to promptly deposit DWSRF program funds into appropriate accounts.

(1) A State must agree to deposit the portion of the capitalization grant to be used for projects into the Fund.

(2) A State must agree to maintain separate and identifiable accounts for the portion of the capitalization grant to be used for set-aside activities.

(3) A State must agree to deposit net bond proceeds, interest earnings, and repayments into the Fund.

(4) A State must agree to deposit any fees, which include interest earned on fees, into the Fund or into separate and identifiable accounts.

(g) *Provide State match.* A State must agree to deposit into the Fund an amount from State monies that equals at least 20 percent of each capitalization grant payment.

(1) A State must identify the source of State match in the capitalization grant application.

(2) A State must deposit the match into the Fund on or before the date that a State receives each payment for the capitalization grant, except when a State chooses to use a letter of credit (LOC) mechanism or similar financial arrangement for the State match. Under this mechanism, payments to this LOC account must be made proportionally on the same schedule as the payments for the capitalization grant. Cash from this State match LOC account must be drawn into the Fund as cash is drawn into the Fund through the Automated Clearing House (ACH).

(3) A State may issue general obligation or revenue bonds to derive the State match. The net proceeds from the bonds issued by a State to derive the match must be deposited into the Fund and the bonds may only be retired using the interest portion of loan repayments and interest earnings of the Fund. Loan principal must not be used to retire State match bonds.

(4) If the State deposited State monies in a dedicated revolving fund after July 1, 1993, and prior to receiving a capitalization grant, the State may credit these monies toward the match requirement if:

(i) The monies were deposited in a separate revolving fund that subsequently became the Fund after receiving a capitalization grant and they were expended in accordance with section 1452 of the Act;

(ii) The monies were deposited in a separate revolving fund that has not received a capitalization grant, they were expended in accordance with section 1452 of the Act, and an amount equal to all repayments of principal and payments of interest from loans will be deposited into the Fund; or

(iii) The monies were deposited in a separate revolving fund and used as a reserve for a leveraged program consistent with section 1452 of the Act and an amount equal to the reserve is transferred to the Fund as the reserve's function is satisfied.

(5) If a State provides a match in excess of the required amount, the excess balance may be credited towards match requirements associated with subsequent capitalization grants.

(h) *Provide match for State program management set-aside.* A State must agree to provide a dollar for dollar match for expenditures made under the State program management set-aside in accordance with § 35.3535(d)(2). This match is separate from the 20 percent State match requirement for the capitalization grant in paragraph (g) of this section and must be identified as an eligible credit, deposited into set-aside

accounts, or documented as in-kind services.

(i) *Use generally accepted accounting principles.* A State must agree to ensure that the State and public water systems receiving assistance will use accounting, audit, and fiscal procedures conforming to Generally Accepted Accounting Principles (GAAP) as promulgated by the Governmental Accounting Standards Board or, in the case of privately-owned systems, the Financial Accounting Standards Board. The accounting system used for the DWSRF program must allow for proper measurement of:

(1) Revenues earned and other receipts, including but not limited to, loan repayments, capitalization grants, interest earnings, State match deposits, and net bond proceeds;

(2) Expenses incurred and other disbursements, including but not limited to, loan disbursements, repayment of bonds, and other expenditures allowed under section 1452 of the Act; and

(3) Assets, liabilities, capital contributions, and retained earnings.

(j) *Conduct audits.* In accordance with § 35.3570(b), a State must agree to comply with the provisions of the Single Audit Act Amendments of 1996. A State may voluntarily agree to conduct annual independent audits.

(k) *Dedicated repayment source.* A State must agree to adopt policies and procedures to assure that assistance recipients have a dedicated source of revenue for repayment of loans, or in the case of privately-owned systems, assure that recipients demonstrate that there is adequate security to assure repayment of loans.

(l) *Efficient expenditure.* A State must agree to commit and expend all funds as efficiently as possible and in an expeditious and timely manner.

(m) *Use funds in accordance with IUP.* A State must agree to use all funds in accordance with an IUP that was prepared after providing for public review and comment.

(n) *Biennial report.* A State must agree to complete and submit a Biennial Report that describes how it has met the goals and objectives of the previous two fiscal years as stated in the IUPs and capitalization grant agreements. The State must submit this report to the RA according to the schedule established in the capitalization grant agreement.

(o) *Comply with cross-cutters.* A State must agree to comply with all applicable Federal cross-cutting authorities.

(p) *Comply with provisions to avoid withholdings.* A State must agree to demonstrate how it is complying with

the requirements of capacity development authority, capacity development strategy, and operator certification program provisions in order to avoid withholdings of funds under § 35.3515(b)(1)(i) through (b)(1)(iii).

§ 35.3555 Intended Use Plan (IUP).

(a) *General.* A State must prepare an annual IUP which describes how it intends to use DWSRF program funds to support the overall goals of the DWSRF program and contains the information outlined in paragraph (c) of this section. In those years in which a State submits a capitalization grant application, EPA must receive an IUP prior to the award of the capitalization grant. A State must prepare an annual IUP as long as the Fund or set-aside accounts remain in operation. The IUP must conform to the fiscal year adopted by the State for the DWSRF program (e.g., the State's fiscal year or the Federal fiscal year).

(b) *Public review requirements.* A State must seek meaningful public review and comment during the development of the IUP. A State must include a description of the public review process and an explanation of how it responded to major comments and concerns. If a State prepares separate IUPs (one for Fund monies and one for set-aside monies), the State must seek public review and comment during the development of each IUP.

(c) *Content.* Information in the IUP must be provided in a format and manner that is consistent with the needs of the RA.

(1) *Priority system.* The IUP must include a priority system for ranking individual projects for funding that provides sufficient detail for the public and EPA to readily understand the criteria used for ranking. The priority system must provide, to the maximum extent practicable, that priority for the use of funds will be given to projects that: address the most serious risk to human health; are necessary to ensure compliance with the requirements of the Act (including requirements for filtration); and assist systems most in need, on a per household basis, according to State affordability criteria. A State that does not adhere to the three criteria must demonstrate why it is unable to do so.

(2) *Priority lists of projects.* All projects, with the exception of projects funded on an emergency basis, must be ranked using a State's priority system and go through a public review process prior to receiving assistance.

(i) The IUP must contain a fundable list of projects that are expected to receive assistance from available funds

designated for use in the current IUP and a comprehensive list of projects that are expected to receive assistance in the future. The fundable list of projects must include: the name of the public water system; the priority assigned to the project; a description of the project; the expected terms of financial assistance based on the best information available at the time the IUP is developed; and the population of the system's service area at the time of the loan application. The comprehensive list must include, at a minimum, the priority assigned to each project and, to the extent known, the expected funding schedule for each project. A State may combine the fundable and comprehensive lists into one list, provided that projects which are expected to receive assistance from available funds designated for use in the current IUP are identified.

(ii) The IUP may include procedures which would allow a State to bypass projects on the fundable list. The procedures must clearly identify the conditions which would allow a project to be bypassed and the method for identifying which projects would receive funding. If a bypass occurs, a State must fund the highest ranked project on the comprehensive list that is ready to proceed. If a State elects to bypass a project for reasons other than readiness to proceed, the State must explain why the project was bypassed in the Biennial Report and during the annual review. To the maximum extent practicable, a State must work with bypassed projects to ensure that they will be prepared to receive funding in future years.

(iii) The IUP may allow for the funding of projects which require immediate attention to protect public health on an emergency basis, provided that a State defines what conditions constitute an emergency and identifies the projects in the Biennial Report and during the annual review.

(iv) The IUP must demonstrate how a State will meet the requirement of providing loan assistance to small systems as described in § 35.3525(a)(5). A State that is unable to comply with this requirement must describe the steps it is taking to ensure that a sufficient number of projects are identified to meet this requirement in future years.

(3) *Distribution of funds.* The IUP must describe the criteria and methods that a State will use to distribute all funds including:

(i) The process and rationale for distribution of funds between the Fund and set-aside accounts;

(ii) The process for selection of systems to receive assistance;

(iii) The rationale for providing different types of assistance and terms, including the method used to determine the market rate and the interest rate;

(iv) The types, rates, and uses of fees assessed on assistance recipients; and

(v) A description of the financial planning process undertaken for the Fund and the impact of funding decisions on the long-term financial health of the Fund.

(4) *Financial status.* The IUP must describe the sources and uses of DWSRF program funds including: the total dollar amount in the Fund; the total dollar amount available for loans, including loans to small systems; the amount of loan subsidies that may be made available to disadvantaged communities from the 30 percent allowance in § 35.3525(b)(2); the total dollar amount in set-aside accounts, including the amount of funds or authority reserved; and the total dollar amount in fee accounts.

(5) *Short- and long-term goals.* The IUP must describe the short-term and long-term goals it has developed to support the overall goals of the DWSRF program of ensuring public health protection, complying with the Act, ensuring affordable drinking water, and maintaining the long-term financial health of the Fund.

(6) *Set-aside activities.* (i) The IUP must identify the amount of funds a State is electing to use for set-aside activities. A State must also describe how it intends to use these funds, provide a general schedule for their use, and describe the expected accomplishments that will result from their use.

(ii) For loans made in accordance with the local assistance and other State programs set-aside under § 35.3535(e)(1)(i) and (e)(1)(ii), the IUP must, at a minimum, describe the process by which recipients will be selected and how funds will be distributed among them.

(7) *Disadvantaged community assistance.* The IUP must describe how a State's disadvantaged community program will operate including:

(i) The State's definition of what constitutes a disadvantaged community;

(ii) A description of affordability criteria used to determine the amount of disadvantaged assistance;

(iii) The amount and type of loan subsidies that may be made available to disadvantaged communities from the 30 percent allowance in § 35.3525(b)(2); and

(iv) To the maximum extent practicable, an identification of projects that will receive disadvantaged assistance and the respective amounts.

(8) *Transfer process.* If a State decides to transfer funds between the DWSRF program and CWSRF program, the IUPs for the DWSRF program and the CWSRF program must describe the process including:

(i) The total amount and type of funds being transferred during the period covered by the IUP;

(ii) The total amount of authority being reserved for future transfer, including the authority reserved from previous years; and

(iii) The impact of the transfer on the amount of funds available to finance projects and set-asides and the long-term impact on the Fund.

(9) *Cross-collateralization process.* If a State decides to cross-collateralize Fund assets of the DWSRF program and CWSRF program, the IUPs for the DWSRF program and the CWSRF program must describe the process including:

(i) The type of monies which will be used as security;

(ii) How monies will be used in the event of a default; and

(iii) Whether or not monies used for a default in the other program will be repaid, and if they will not be repaid, what will be the cumulative impact on the Funds.

(d) *Amending the IUP.* The priority lists of projects may be amended during the year under provisions established in the IUP as long as additions or other substantive changes to the lists, except projects funded on an emergency basis, go through a public review process. A State may change the use of funds from what was originally described in the IUP as long as substantive changes go through a public review process.

§ 35.3560 General payment and cash draw rules.

(a) *Payment schedule.* A State will receive each capitalization grant payment in the form of an increase to the ceiling of funds available through the ACH, made in accordance with a payment schedule negotiated between EPA and the State. A payment schedule that is based on a State's projection of binding commitments and use of set-aside funds as stated in the IUP must be included in the capitalization grant agreement. Changes to the payment schedule must be made through an amendment to the grant agreement.

(b) *Timing of payments.* All payments to a State will be made by the earlier of 8 quarters after the capitalization grant is awarded or 12 quarters after funds are allotted to a State.

(c) *Funds available for cash draw.* Cash draws will be available only up to

the amount of payments that have been made to a State.

(d) *Estimated cash draw schedule.* On a schedule negotiated with EPA, a State must provide EPA with a quarterly schedule of estimated cash draws for the Federal fiscal year. The State must notify EPA when significant changes from the estimated cash draw schedule are anticipated. This schedule must be developed to conform with the procedures applicable to cash draws and must have sufficient detail to allow EPA and the State to jointly develop and maintain a forecast of cash draws.

(e) *Cash draw for set-asides.* A State may draw cash through the ACH for the full amount of costs incurred for set-aside expenditures based on EPA approved workplans. A State may draw cash in advance to ensure funds are available to meet State payroll expenses. However, cash should be drawn no sooner than necessary to meet immediate payroll disbursement needs.

(f) *Cash draw for Fund.* A State may draw cash through the ACH for the proportionate Federal share of eligible incurred project costs. A State need not have disbursed funds for incurred project costs prior to drawing cash. A State may not draw cash for a particular project until the State has executed a loan agreement for that project.

(g) *Calculation of proportionate Federal share—(1) General.* The proportionate Federal share is equal to the Federal monies intended for the Fund (capitalization grant minus set-asides) divided by the total amount of monies intended for the Fund (capitalization grant minus set-asides plus required State match). A State may calculate the proportionate Federal share on a rolling average basis or on a grant by grant basis.

(2) *State overmatch.* (i) The proportionate Federal share does not change if a State is providing funds in excess of the required State match.

(ii) Federal monies may be drawn at a rate that is greater than that determined by the proportionate Federal share calculation when a State is given credit toward its match amount as a result of funding projects in prior years (but after July 1, 1993), or for crediting excess match in the Fund in prior years and disbursing these amounts prior to drawing cash. If the entire amount of a State's required match has been disbursed in advance, the proportionate Federal share of cash draws would be 100 percent.

§ 35.3565 Specific cash draw rules for authorized types of assistance from the Fund.

A State may draw cash for the authorized types of assistance from the Fund described in § 35.3525 according to the following rules:

(a) *Loans*—(1) *Eligible project costs.* A State may draw cash based on the proportionate Federal share of incurred project costs. In the case of incurred planning and design and associated pre-project costs, cash may be drawn immediately upon execution of the loan agreement.

(2) *Eligible project reimbursement costs.* A State may draw cash to reimburse assistance recipients for eligible project costs at a rate no greater than equal amounts over the maximum number of quarters that capitalization grant payments are made. A State may immediately draw cash for up to 5 percent of each fiscal year's capitalization grant or 2 million dollars, whichever is greater, to reimburse project costs.

(b) *Refinance or purchase of local debt obligations*—(1) *Completed projects.* A State may draw cash up to the portion of the capitalization grant committed to the refinancing or purchase of local debt obligations of municipal, intermunicipal, or interstate agencies at a rate no greater than equal amounts over the maximum number of quarters that capitalization grant payments are made. A State may immediately draw cash for up to 5 percent of each fiscal year's capitalization grant or 2 million dollars, whichever is greater, to refinance or purchase local debt.

(2) *Portions of projects not completed.* A State may draw cash based on the proportionate Federal share of incurred project costs according to the rule for loans in paragraph (a)(1) of this section.

(3) *Purchase of incremental disbursement bonds from local governments.* A State may draw cash based on a schedule that coincides with the rate at which costs are expected to be incurred for the project.

(c) *Purchase insurance for local debt obligations.* A State may draw cash for the proportionate Federal share of insurance premiums as they are due.

(d) *Guarantee for local debt obligations*—(1) *In the event of default.* In the event of imminent default in debt service payments on a guaranteed local debt, a State may draw cash immediately up to the total amount of the capitalization grant that is dedicated for the guarantee. If a balance remains after the default is satisfied, the State must negotiate a revised cash draw

schedule for the remaining amount dedicated for the guarantee.

(2) *In the absence of default.* A State may draw cash up to the amount of the capitalization grant dedicated for the guarantee based on actual incurred project costs. The amount of the cash draw would be based on the proportionate Federal share of incurred project costs multiplied by the ratio of the guarantee reserve to the amount guaranteed.

(e) *Revenue or security for Fund debt obligations (leveraging)*—(1) *In the event of default.* In the event of imminent default in debt service payments on a secured debt, a State may draw cash immediately up to the total amount of the capitalization grant that is dedicated for the security. If a balance remains after the default is satisfied, the State must negotiate a revised schedule for the remaining amount dedicated for the security.

(2) *In the absence of default.* A State may draw cash up to the amount of the capitalization grant dedicated for the security using either of the following methods:

(i) *All projects method.* A State may draw cash based on the incurred project costs multiplied by the ratio of the Federal portion of the reserve to the total reserve multiplied by the ratio of the total reserve to the net bond proceeds.

(ii) *Group of projects method.* A State may identify a group of projects whose cost is approximately equal to the total of that portion of the capitalization grant and the State match dedicated as a security. The State may then draw cash based on the incurred costs of the selected projects only, multiplied by the ratio of the Federal portion of the security to the entire security.

(3) *Aggressive leveraging.* Where the cash draw rules in paragraphs (e)(1) and (e)(2) of this section would significantly frustrate a State's leveraged program, EPA may permit an exception to these cash draw rules and provide for a more accelerated cash draw. A State must demonstrate that:

(i) There are eligible projects ready to proceed in the immediate future with enough costs to justify the amount of the secured bond issue;

(ii) The absence of cash on an accelerated basis will substantially delay these projects;

(iii) The Fund will provide substantially more assistance if accelerated cash draws are allowed; and

(iv) The long-term viability of the State program to meet drinking water needs will be protected.

(f) *Loans to privately-owned systems.* In cases where State monies cannot be

used to provide loans to privately-owned systems, a State may draw 100 percent Federal monies for costs incurred by privately-owned systems. When Federal monies are drawn for incurred costs, the State must deposit or have previously deposited into the Fund the required match associated with the amount of cash drawn. Every 18 months, the State must submit documentation showing that it has met its proportionate Federal share within the last 6 months. If a State is unable to document that it has met its proportionate Federal share, State match deposited into the Fund must be expended before Federal monies are drawn for costs incurred by publicly-owned systems until the State meets its proportionate Federal share.

§ 35.3570 Reports and audits.

(a) *Biennial report*—(1) *General.* A State must submit a Biennial Report to the RA describing how it has met the goals and objectives of the previous two fiscal years as stated in the IUPs and capitalization grant agreements, including the most recent audit of the Fund and the entire State allotment. The State must submit this report to the RA according to the schedule established in the capitalization grant agreement. Information provided in the Biennial Report on other EPA programs eligible for assistance from the DWSRF program may not replace the reporting requirements for those other programs.

(2) *Financial report.* As part of the Biennial Report, a State must present the financial status of the DWSRF program, including the total dollar amount in fee accounts. This report must, at a minimum, include the financial statements and footnotes required under GAAP to present fairly the financial condition and results of operations.

(3) *Matters to establish in the biennial report.* A State must establish in the Biennial Report that it has complied with section 1452 of the Act and this subpart. In particular, the Biennial Report must demonstrate that a State has:

(i) Managed the DWSRF program in a fiscally prudent manner and adopted policies and processes which promote the long-term financial health of the Fund;

(ii) Deposited its match (cash or State LOC) into the Fund in accordance with the requirements of § 35.3550(g);

(iii) Made binding commitments with assistance recipients to provide assistance from the Fund consistent with the requirements of § 35.3550(e);

(iv) Funded only the highest priority projects listed in the IUP and

documented why priority projects were bypassed in accordance with § 35.3555(c)(2);

(v) Provided assistance only to eligible public water systems and for eligible projects and project-related costs under § 35.3520;

(vi) Provided assistance only for eligible set-aside activities under § 35.3535 and conducted activities consistent with workplans and other requirements of § 35.3535 and § 35.3540;

(vii) Provided loan assistance to small systems consistent with the requirements of § 35.3525(a)(5) and § 35.3555(c)(2)(iv);

(viii) Provided assistance to disadvantaged communities consistent with the requirements of § 35.3525(b) and § 35.3555(c)(7);

(ix) Used fees for eligible purposes under § 35.3530(b)(2) and (b)(3) and assessed fees included as principal in a loan in accordance with the limitations in § 35.3530(b)(3)(i) through (b)(3)(iii);

(x) Adopted and implemented procedures consistent with the requirements of § 35.3530(c) and § 35.3555(c)(8) if funds were transferred from the DWSRF program and CWSRF program;

(xi) Adopted and implemented procedures consistent with the requirements of § 35.3530(d) and § 35.3555(c)(9) if Fund assets of the DWSRF program and CWSRF program were cross-collateralized;

(xii) Reviewed all DWSRF program funded projects and activities for compliance with Federal cross-cutting authorities that apply to the State as a grant recipient and those which apply to assistance recipients in accordance with § 35.3575;

(xiii) Reviewed all DWSRF program funded projects and activities in accordance with approved State environmental review procedures under § 35.3580; and

(xiv) Complied with general grant regulations at 40 CFR part 31 and specific conditions of the grant.

(4) *Joint report.* A State which jointly administers the DWSRF program and the CWSRF program may submit a report that addresses both programs. However, programmatic and financial information for each program must be identified separately.

(b) *Audit.* (1) A State must comply with the provisions of the Single Audit Act Amendments of 1996, 31 U.S.C. 7501-7, and Office of Management and Budget's Circular A-133 and Compliance Supplement.

(2) A State may voluntarily agree to conduct annual independent audits which provide an auditor's opinion on

the DWSRF program financial statements, reports on internal controls, and reports on compliance with section 1452 of the Act, applicable regulations, and general grant requirements. The agreement to conduct voluntary independent audits should be documented in the Operating Agreement or in another part of the capitalization grant agreement.

(3) Those States that do not conduct independent audits will be subject to periodic audits by the EPA Office of Inspector General.

(c) *Annual review*—(1) *Purpose.* The purpose of the annual review is to assess the success of the State's performance of activities identified in the IUP, Biennial Report (in years when it is submitted), and Operating Agreement (if used) and to determine compliance with the capitalization grant agreement, requirements of section 1452 of the Act, and this subpart. The RA will complete the annual review according to the schedule established in the capitalization grant agreement.

(2) *Records access.* After reasonable notice by the RA, the State or assistance recipient must make available such records as the RA reasonably considers pertinent to review and determine State compliance with the capitalization grant agreement and requirements of section 1452 of the Act and this subpart. The RA may conduct on-site visits as deemed necessary to perform the annual review.

(d) *Information management system*—(1) *Purpose.* The purpose of the information management system is to assess the DWSRF programs, to monitor State progress in years in which Biennial Reports are not submitted, and to assist in conducting annual reviews.

(2) *Reporting.* A State must annually submit information to EPA on the amount of funds available and assistance provided by the DWSRF program.

§ 35.3575 Application of Federal cross-cutting authorities (cross-cutters).

(a) *General.* A number of Federal laws, executive orders, and government-wide policies apply by their own terms to projects and activities receiving Federal financial assistance, regardless of whether the statute authorizing the assistance makes them applicable. A few cross-cutters apply by their own terms only to the State as the grant recipient because the authorities explicitly limit their application to grant recipients.

(b) *Application of cross-cutter requirements.* Except as provided in paragraphs (c) and (d) of this section and in § 35.3580, cross-cutter

requirements apply in the following manner:

(1) All projects for which a State provides assistance in amounts up to the amount of the capitalization grant deposited into the Fund must comply with the requirements of the cross-cutters. Activities for which a State provides assistance from capitalization grant funds deposited into set-aside accounts must comply with the requirements of the cross-cutters, to the extent that the requirements of the cross-cutters are applicable.

(2) Projects and activities for which a State provides assistance in amounts that are greater than the amount of the capitalization grant deposited into the Fund or set-aside accounts are not subject to the requirements of the cross-cutters.

(3) A State that elects to impose the requirements of the cross-cutters on projects and activities for which it provides assistance in amounts that are greater than the amount of the capitalization grant deposited into the Fund or set-aside accounts may credit this excess to meet future cross-cutter requirements on assistance provided from the respective accounts.

(c) *Federal anti-discrimination law requirements.* All programs, projects, and activities for which a State provides assistance are subject to the following Federal anti-discrimination laws: Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d *et seq.*; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102.

(d) *Minority and Women's Business Enterprise (MBE/WBE) procurement requirements.* A State must negotiate a fair share goal with the RA for the participation of MBE/WBEs. The fair share goal must be based on the availability of MBE/WBEs in the relevant market area to do the work under the DWSRF program. Each capitalization grant agreement must describe how a State will comply with MBE/WBE procurement requirements, including how it will apply the fair share goal to assistance recipients to which the requirements apply and how it will assure that assistance recipients take the following six affirmative steps:

(1) Include small, minority and women's businesses on solicitation lists;

(2) Assure that small, minority and women's businesses are solicited whenever they are potential sources;

(3) Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small, minority and women's businesses;

(4) Establish delivery schedules, when the requirements of the work permits, which will encourage participation by small, minority and women's businesses;

(5) Use the services of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce, as appropriate; and

(6) Require the contractor to take the affirmative steps in paragraphs (d)(1) through (d)(5) of this section if the contractor awards subagreements.

(e) *Complying with cross-cutters.* A State is responsible for ensuring that assistance recipients comply with the requirements of cross-cutters, including initiating any required consultations with State or Federal agencies responsible for individual cross-cutters. A State must inform EPA when consultation or coordination with other Federal agencies is necessary to resolve issues regarding compliance with cross-cutter requirements.

§ 35.3580 Environmental review requirements.

(a) *General.* With the exception of activities identified in paragraph (b) of this section, a State must conduct environmental reviews of the potential environmental impacts of projects and activities receiving assistance.

(b) *Activities excluded from environmental reviews.* A State must conduct environmental reviews of source water protection activities under § 35.3535, unless the activities solely involve administration (e.g., personnel, equipment, travel) or technical assistance. A State is not required to conduct environmental reviews of all the other eligible set-aside activities under § 35.3535 because EPA has determined that, due to their nature, they do not individually, cumulatively over time, or in conjunction with other actions have a significant effect on the quality of the human environment. A State does not need to include provisions in its SERP for excluding these activities. Activities excluded from environmental reviews remain subject to other applicable Federal cross-cutting authorities under § 35.3575.

(c) *Tier I environmental reviews.* All projects that are assisted by the State in amounts up to the amount of the capitalization grant deposited into the Fund must be reviewed in accordance with a SERP that is functionally equivalent to the review undertaken by EPA under the National Environmental Policy Act (NEPA). With the exception of activities excluded from environmental reviews in paragraph (b)

of this section, activities for which a State provides assistance from capitalization grant funds deposited into set-aside accounts must also be reviewed in accordance with a SERP that is functionally equivalent to the review undertaken by EPA under the NEPA. A State may elect to apply the procedures at 40 CFR part 6 and related subparts or apply its own "NEPA-like" SERP for conducting environmental reviews, provided that the following elements are met:

(1) *Legal foundation.* A State must have the legal authority to conduct environmental reviews of projects and activities receiving assistance. The legal authority and supporting documentation must specify:

(i) The mechanisms to implement mitigation measures to ensure that a project or activity is environmentally sound;

(ii) The legal remedies available to the public to challenge environmental review determinations and enforcement actions;

(iii) The State agency that is primarily responsible for conducting environmental reviews; and

(iv) The extent to which environmental review responsibilities will be delegated to local recipients and will be subject to oversight by the primary State agency.

(2) *Interdisciplinary approach.* A State must employ an interdisciplinary approach for identifying and mitigating adverse environmental effects including, but not limited to, those associated with other cross-cutting Federal environmental authorities.

(3) *Decision documentation.* A State must fully document the information, processes, and premises that influence its decisions to:

(i) Proceed with a project or activity contained in a finding of no significant impact (FNSI) following documentation in an environmental assessment (EA);

(ii) Proceed or not proceed with a project or activity contained in a record of decision (ROD) following preparation of a full environmental impact statement (EIS);

(iii) Reaffirm or modify a decision contained in a previously issued categorical exclusion (CE), EA/FNSI or EIS/ROD following a mandatory 5 year environmental reevaluation of a proposed project or activity; and

(iv) If a State elects to implement processes for either partitioning an environmental review or categorically excluding projects or activities from environmental review, the State must similarly document these processes in its proposed SERP.

(4) *Public notice and participation.* A State must provide public notice when: a CE is issued or rescinded; a FNSI is issued but before it becomes effective; a decision that is issued 5 years earlier is reaffirmed or revised; and prior to initiating an EIS. Except with respect to a public notice of a CE or reaffirmation of a previous decision, a formal public comment period must be provided during which no action on a project or activity will be allowed. A public hearing or meeting must be held for all projects and activities except for those having little or no environmental effect.

(5) *Alternatives consideration.* A State must have evaluation criteria and processes which allow for:

(i) Comparative evaluation among alternatives, including the beneficial and adverse consequences on the existing environment, the future environment, and individual sensitive environmental issues that are identified by project management or through public participation; and

(ii) Devising appropriate near-term and long-range measures to avoid, minimize, or mitigate adverse impacts.

(d) *Tier II environmental reviews.* A State may elect to apply an alternative SERP to all projects and activities (except those activities excluded from environmental reviews in paragraph (b) of this section) for which a State provides assistance in amounts that are greater than the amount of the capitalization grant deposited into the Fund or set-aside accounts, provided that the process:

(1) Is supported by a legal foundation which establishes the State's authority to review projects and activities;

(2) Responds to other environmental objectives of the State;

(3) Provides for comparative evaluations among alternatives and accounts for beneficial and adverse consequences to the existing and future environment;

(4) Adequately documents the information, processes, and premises that influence an environmental determination; and

(5) Provides for notice to the public of proposed projects and activities and for the opportunity to comment on alternatives and to examine environmental review documents. For projects or activities determined by the State to be controversial, a public hearing must be held.

(e) *Categorical exclusions (CEs).* A State may identify categories of actions which do not individually, cumulatively over time, or in conjunction with other actions have a significant effect on the quality of the human environment and which the

State will exclude from the substantive environmental review requirements of its SERP. Any procedures under this paragraph must provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

(f) *Environmental reviews for refinanced projects or reimbursed project costs.* A State must conduct an environmental review which considers the impacts of a project based on conditions of the site prior to initiation of the project. Failure to comply with the environmental review requirements cannot be justified on the grounds that costs have already been incurred, impacts have already been caused, or contractual obligations have been made prior to the binding commitment.

(g) *EPA approval process.* The RA must review and approve any State "NEPA-like" and alternative procedures to ensure that the requirements for Tier I and Tier II environmental reviews have been met. The RA will conduct these reviews on the basis of the criteria for evaluating NEPA-like reviews contained in Appendix A to this subpart.

(h) *Modifications to approved SERPs.* Significant changes to State environmental review procedures must be approved by the RA.

§ 35.3585 Compliance assurance procedures.

(a) *Causes.* The RA may take action under this section and the enforcement provisions of the general grant regulations at 40 CFR 31.43 if a determination is made that a State has not complied with its capitalization grant agreement, other requirements under section 1452 of the Act, this subpart, or 40 CFR part 31 or has not managed the DWSRF program in a

financially sound manner (e.g., allows consistent and substantial failures of loan repayments).

(b) *RA's course of action.* For cause under paragraph (a) of this section, the RA will issue a notice of non-compliance and may prescribe appropriate corrective action. A State's corrective action must remedy the specific instance of non-compliance and adjust program management to avoid non-compliance in the future.

(c) *Consequences for failure to comply.* (1) If within 60 days of receipt of the non-compliance notice a State fails to take the necessary actions to obtain the results required by the RA or fails to provide an acceptable plan to achieve the results required, the RA may suspend payments until the State has taken acceptable actions. Once a State has taken the corrective action deemed necessary and adequate by the RA, the suspended payments will be released and scheduled payments will recommence.

(2) If a State fails to take the necessary corrective action deemed adequate by the RA within 12 months of receipt of the original notice, any suspended payments will be deobligated and reallocated to eligible States. Once a payment has been made for the Fund, that payment and cash draws from that payment will not be subject to withholding. All future payments will be withheld from a State and reallocated until such time that adequate corrective action is taken and the RA determines that the State is back in compliance.

(d) *Dispute resolution.* A State or an assistance recipient that has been adversely affected by an action or omission by EPA may request a review of the action or omission under general grant regulations at 40 CFR part 31, subpart F.

Appendix A to Subpart L—Criteria for Evaluating a State's Proposed NEPA-Like Process

The following criteria will be used by the RA to evaluate a proposed SERP:

(A) *Legal foundation.* Adequate documentation of the legal authority, including legislation, regulations or executive orders and/or Attorney General certification that authority exists.

(B) *Interdisciplinary approach.* The availability of expertise, either in-house or otherwise, accessible to the State agency.

(C) *Decision documentation.* A description of a documentation process adequate to explain the basis for decisions to the public.

(D) *Public notice and participation.* A description of the process, including routes of publication (e.g., local newspapers and project mailing list), and use of established State legal notification systems for notices of intent, and criteria for determining whether a public hearing is required. The adequacy of a rationale where the comment period differs from that under NEPA and is inconsistent with other State review periods.

(E) *Alternatives consideration.* The extent to which the SERP will adequately consider:

- (1) Designation of a study area comparable to the final system;
- (2) A range of feasible alternatives, including the no action alternative;
- (3) Direct and indirect impacts;
- (4) Present and future conditions;
- (5) Land use and other social parameters including relevant recreation and open-space considerations;
- (6) Consistency with population projections used to develop State implementation plans under the Clean Air Act;
- (7) Cumulative impacts including anticipated community growth (residential, commercial, institutional, and industrial) within the project study area; and
- (8) Other anticipated public works projects including coordination with such projects.

[FR Doc. 00-19783 Filed 8-6-00; 8:45 am]

BILLING CODE 6560-50-P



Federal Register

**Monday,
August 7, 2000**

Part III

Department of Education

**Office of Elementary and Secondary
Education; Intent To Repay to the State
of Alabama Department of Education
Funds Recovered as a Result of a Final
Audit Determination; Notice**

DEPARTMENT OF EDUCATION**Office of Elementary and Secondary Education; Intent to Repay to the State of Alabama Department of Education Funds Recovered as a Result of a Final Audit Determination****AGENCY:** Department of Education.**ACTION:** Notice of intent to award grant-back funds.

SUMMARY: Under section 459 of the General Education Provisions Act (GEPA) (20 U.S.C. 1234th), the Secretary of Education (Secretary intends to repay to the State of Alabama Department of Education, the State educational agency (SEA), an amount equal to 75 percent of the principal amount of funds returned to the Department as the result of final audit determinations. The U.S. Department of Education's (Department) recovery of funds followed a Cooperative Audit Resolution and Oversight Initiative (CAROI) agreement entered into by the Lawrence County Board of Education and the Alabama State Department of Education to resolve issues relating to Lawrence County's compliance with the use of Federal funds. The CAROI agreement signed on March 25, 1997 required that Lawrence County repay a total of \$110,779.78, which was subsequently returned to the Department on March 19, 1997. This notice describes the SEA's plan, submitted on behalf of Lawrence County Board of Education, the local educational agency (LEA), for the use of the repaid funds and the terms and conditions under which the Department intends to make those funds available. The notice invites comments on the proposed grantback.

DATES: All comments must be received on or before September 6, 2000.**ADDRESSES:** All written comments should be addressed to Mary Jean LeTendre, Director, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW, Federal Office Building 6, Room 3W230, Washington, D.C. 20202-6132. Comments may also be sent through the Internet to: MaryJean_LeTendre@ed.gov**FOR FURTHER INFORMATION CONTACT:** S. Colene Nelson, U.S. Department of Education, 400 Maryland Avenue, SW, Federal Office building 6, Room 3E335, Washington, DC 20202-6132. Telephone: (202) 260-0979. Internet address: Colene_Nelson@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service at 1-888-877-8339.

Individuals with disabilities may obtain this document in an alternative format, (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:**A. Background**

The Department has recovered \$110,779.78 from the Alabama SEA in satisfaction of claims arising from an audit of the Lawrence County Board of Education, conducted by the Alabama Department of Examiners of Public Accounts for fiscal years (FY) 1990 through 1993.

Some claims involved the LEA's administration of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended in 1988, a program providing financial assistance to State and local educational agencies to address the special educational needs of educationally deprived children in areas with high concentrations of children from low-income families (Chapter 1). Additional claims involved the administration of the Even Start Program which provides funds for family-centered education projects to help parents become full partners in the education of their children, to assist children in reaching their full potential as learners, and to provide literacy training for their parents.

Specifically with respect to Chapter 1 for FY 1990 and 1991, the auditors found that competitive bids had not been taken for facilities renovations and, thus, the payments for those renovations were found to be in conflict with Federal procurement standards. The auditors questioned \$11,900.00 of Chapter 1 funds. The auditors also found that a part-time clerical assistant was paid \$480.00 through accounts payable rather than the normal payroll process. Other violations of Federal guidelines for compensation of personal services included:

(1) Twenty-five percent of a janitor's salary was paid from Chapter 1 funds where central office space occupied by Chapter 1 offices appeared to be less than five percent of the total floor space (\$5,126.06 in questioned costs);

(2) Salary payments exceeding the approved budget totaled \$17,361.67 and were identified as questioned costs of Chapter 1.

Thus, questioned costs for FY 1990 and 1991 totaled \$34,867.73 of Chapter 1 monies.

For FY 1992 and 1993, a part-time employee was paid from Chapter 1 funds without approved from the Lawrence County Board for employment, resulting in questioned

costs of \$1,481.25. Furthermore, the Chapter 1 director was paid \$732.66 more than his approval salary in FY 1992, resulting in that amount of questioned costs. Also, the Chapter 1 Even Start Director was paid \$5,735.57 more than his approved salary during FY 1993, resulting in that amount of questioned costs.

The auditors further found that in FY 1993 the LEA purchased computer labs without obtaining timely approval and failing to follow proper purchasing procedures. \$182,165.99 was identified in questioned costs. Lastly, audit work revealed that during FY 1991 through 1993 Chapter 1 and Even Start funds as well as General Fund resources were expended for the renovation of a school building. However, there was no documentation reflecting the Lawrence County School Board of Education's approval of the renovation, nor supporting compliance with Alabama's building codes or their administrative and financial rules. No competitive bids were found to have been taken for materials or labor related to the renovation. Questioned costs under Chapter 1 were \$66,913.95 and those under Even Start were \$13,263.39. Total questioned costs for FY 1992 and 1993 were \$270,292.81. (Use of funds for construction or renovation is no longer allowable under either the Title I or Even Start program statutes.)

Summarily, audit exceptions resulting in a return of funds initially totaled \$305,160.54 covering four fiscal years, 1990 through 1993. This amount was reduced to \$110,780 because the SEA determined that some of the funds in question were actually used to provide satisfactory program services to eligible Title I students. Of this amount, \$10,995.35 related to the Even Start questioned costs, and the balance (\$99,784.65) to Chapter 1.

B. Authority for Awarding a Grantback

Section 459(a) of GEPA, 20 U.S.C. 1234h, provides that whenever the Secretary has recovered program funds following a final audit determination, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this grantback arrangement if the Secretary determines that the—

(1) Practices or procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program, provided that

the SEA or LEA was notified of any noncompliance with such requirements and given a reasonable period of time to remedy that noncompliance;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exceptions; and

(3) Use of funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 459(a)(2) of GEPA, the SEA has applied for a grantback of \$83,085—75 percent of the principal amount recovered by the Department—and has submitted a plan on behalf of the LEA for use of \$74,838 of the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Title I, Part A, of ESEA, successor to Chapter 1, as well as \$8,247 of the grantback funds to provide funds for family-centered education projects to help parents become full partners in their children's education under Title I, Part B, of ESEA.

According to the plan, the LEA will equitably distribute the \$74,838 of grantback funds under Title I to the K-12 Title I schools in the district to purchase computers. Computer equipment will be used for each school listed below. There are two targeted assistance schools: Hatton Elementary and East Lawrence Elementary. Also, there are nine schools operating schoolwide programs: Hazlewood Elementary, Hazlewood High School, R.A. Hubbard School, Courtland High School, East Lawrence Middle, Moulton Elementary, Moulton Middle, Speake School, and Mt. Hope School. The LEA recently completed system networking for internet access. The updated equipment will help provide enhanced opportunities for Lawrence County's disadvantaged students attending high poverty schools to achieve to challenging academic standards. The

amount of \$8,247 will be used for Even Start personnel salaries and benefits.

D. The Assistant Secretary's Determination

The Assistant Secretary has carefully reviewed the plan submitted by the SEA. Based upon that review, the Assistant Secretary has determined that the conditions under section 459 of GEPA have been met. These determinations are based upon the best information available to the Assistant Secretary at the present time. If this information is not accurate or complete, the Assistant Secretary may take appropriate administrative action. In finding that the conditions of section 459 of GEPA have been met, the Assistant Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

E. Notice of the Assistant Secretary's Intent to Enter Into a Grantback Arrangement

Section 459(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Department must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which payment will be made.

In accordance with section 459(d) of GEPA, a notice is hereby given that the Assistant Secretary intends to make funds available to the SEA under a grantback arrangement. The grantback award would be in the amount of \$83,085.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The SEA and LEA agree to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved in advance by the Assistant Secretary; and

(c) The budget that was submitted with the plan and any amendments to

the budget that are approved in advance by the Assistant Secretary.

(2) All funds received under the grantback arrangement must be obligated in accordance with the SEA's plan but, in no event, after September 30, 2000 as required under 459(c) of GEPA.

(3) The SEA, on behalf of the LEA, will, not later than December 31, 2000, submit a report to the Assistant Secretary that—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget; and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditure of funds awarded under the grantback arrangement.

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 Adobe Acrobat Reader, 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>

(Catalog of Federal Domestic Assistance Numbers: 84.010, Title I, Improving Basic Programs Operated by Local Education Agencies; 84.213, Even Start—State Education Agencies)

Dated: July 31, 2000.

Thomas M. Corwin,
Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 00-19802 Filed 8-4-00; 8:45 am]

BILLING CODE 4000-01-M



Federal Register

**Monday,
August 7, 2000**

Part IV

**Department of
Agriculture**

Agricultural Marketing Service

7 CFR Part 1240

**Honey Research, Promotion, and
Consumer Information Order; Revision of
Subpart C—Referendum Procedures and
Proposed Amendments and Referendum
Order; Final Rule and Proposed Rule**

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 1240**

[FV-00-702 FR]

Honey Research, Promotion, and Consumer Information Order; Revision of Subpart C— Referendum Procedures**ACTION:** Final rule.

SUMMARY: This rule revises the procedures which the U.S. Department of Agriculture (USDA or the Department) will use in conducting a referendum to determine whether honey producers, producer-packers, importers, and handlers subject to the Honey Research, Promotion, and Consumer Information Act (Act) favor implementation of changes to the Honey Research, Promotion, and Consumer Information Order (Order) based on the 1998 amendments to the Act. This rule revises the referendum procedures under the Order to allow handlers to vote on changes to the program. These procedures will also be used in future referenda on the program.

DATES: Effective September 6, 2000.**FOR FURTHER INFORMATION CONTACT:**

Kathie M. Birdsell, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW, Room 2535 South Building, Washington, DC 20250-0244; telephone (202) 720-9915; facsimile (202) 205-2800; e-mail kathie.birdsell@usda.gov.

SUPPLEMENTARY INFORMATION: The honey research and promotion program operates under the Honey Research, Promotion, and Consumer Information Order (Order) (7 CFR part 1240). The Order is authorized by the Honey Research, Promotion, and Consumer Information Act (Act) [Pub. L. 98-590, 7 U.S.C. 4601-4613]. The Act was amended on June 23, 1998, and requires the U.S. Department of Agriculture (USDA or the Department) to obtain public comments and conduct a national referendum on making similar amendments to the Order.

Prior documents. USDA published proposed referendum procedures in the **Federal Register** on May 15, 2000 (65 FR 30924) with a 60-day comment period. This final rule addresses the three comments that were received by the June 14, 2000, deadline.

In addition, a proposed rule on amending the Order was published in the **Federal Register** on February 28, 2000 (65 FR 10600) with a 60-day

comment period. USDA is publishing a second proposed rule on the amendments, which reflects the comments which were received, separately in this issue of the **Federal Register**.

Votable amendments. The votable amendments would: (1) Require the National Honey (Board) to reserve 8 percent of its funds annually for beekeeping and production research; (2) authorize the Board to develop recommendations for purity standards and an inspection and monitoring system in order to enhance the image of honey and honey products; (3) add two handler members who are also importers to the Board; (4) decrease the producer assessment from 1 cent per pound to 0.75 cents per pound; (5) add an assessment of 0.75 cents per pound on handlers; and (6) increase the assessment rate on imports from 1 cent per pound to 1.5 cents per pound.

Automatic amendments. The following amendments will be made to the Order regardless of the outcome of the referendum: (1) Changing the two importer/exporter positions on the Board to two importer positions; (2) eliminating the public member position; (3) revising nomination and eligibility requirements; (4) requiring that at least 50 percent of the Board members be honey producers; (5) providing authority for the Board to develop a voluntary quality assurance program with enforcement by USDA; (6) eliminating the requirement to file for an exemption under the program; and (7) removing obsolete language.

Question and Answer Overview*Why Are These Procedures Being Published?*

USDA is going to conduct a referendum on proposed amendments to the honey research and promotion program in September 2000, and revised procedures are needed to allow handlers to vote. The current procedures only allow producers, producer-packers, and importers to vote because they are the only ones who currently pay assessments to the National Honey Board (Board). One of the proposed amendments would require handlers to pay assessments to the Board for the first time. Therefore, the referendum rules are being changed to give handlers the opportunity to vote on whether they want to pay assessments. These procedures are being made public in advance of the referendum to help ensure that members of the honey industry know the eligibility criteria for voting and other pertinent information.

When Is the Referendum?

The voting period for the referendum will be from September 5 through 29, 2000. The Agricultural Marketing Service (AMS) will mail all known eligible voters a ballot, details on the proposed amendments, and voting instructions no later than August 28, 2000.

Who Is Eligible To Vote in the Referendum?

Most honey producers, producer-packers, importers, and handlers who produced, handled, or imported honey or honey products during calendar years 1998 and 1999 will be eligible to vote in the referendum. However, certain producers, producer-packers, handlers, and importers would not be eligible to vote. If you produced, produced and handled, or imported less than 6,000 pounds of honey or honey products per year and you distributed that honey directly through local retail outlets such as roadside stands, farmers markets, or groceries, you would be ineligible to vote in the referendum unless you voluntarily paid assessments in 1998 and 1999.

How Many Voters Need To Approve the Amendments in Order for Them To Be Made?

In order for the votable amendments to become effective, they must be approved by a majority of the voters in the referendum and those voters must represent 50 percent or more of the honey produced and handled and honey and honey products imported by the voters in the referendum.

If I am a Producer, How Will my Vote Be Counted?

If you are a producer, you are entitled to one vote which includes the number of pounds of honey you produced in 1998 and 1999.

If I am a Producer-packer, How Will my Vote Be Counted?

One of the proposed amendments to the Order would implement a new assessments on handlers. Therefore, as a producer-packer, you will be entitled to one vote as a producer and one vote as a handler. Your producer vote will include the number of pounds of honey you produced during 1998 and 1999, and your handler vote will include the number of pounds of domestic honey you handled during 1998 and 1999.

If I am a Handler, How Will my Vote Be Counted?

You are entitled to one vote as a handler based on the number of pounds of domestic honey you handled during

1998 and 1999. If you also imported honey, you may cast a ballot as an importer on the honey and honey products on which you paid the import assessment in 1998 and 1999.

If I am an Importer, How Will my Vote Be Counted?

You are entitled to cast two ballots, one for the handler portion of your assessments and one for the importer portion of your assessment. Each ballot will include the number of pounds of honey and honey products you imported during 1998 and 1999.

Is a Cooperative Considered a Producer or a Handler for the Purposes of the Referendum?

A cooperative is considered a handler for the purposes of voting in the referendum. Individual producers who belong to cooperatives are entitled to cast a ballot for the domestic honey that they produce. A cooperative may cast a ballot covering the number of pounds of domestic honey handled by the cooperative in 1998 and 1999. If a cooperative is also an importer, the cooperative may also cast a ballot covering the foreign honey and honey products that the cooperative imported as importer of record in 1998 and 1999.

How Can I Vote in the Referendum?

Voting will take place by mail. All known eligible producers, producer-packers, importers, and handlers will receive a ballot and voting instructions in the mail from USDA. Producers, producer-packers, importers, and handlers who believe they are eligible to vote and who do not receive a ballot in the mail may request a ballot by calling a toll-free telephone number. The ballot must be received by USDA by close of business on September 29, 2000.

How will USDA Make Certain That only Eligible Persons Vote in the Referendum?

USDA will use records from the Board concerning persons who have paid assessments or requested an exemption from assessments. In addition, there are penalties for providing false information to the federal government. By signing a ballot, a voter certifies that he or she is eligible to vote and that the information on the ballot is correct. A person who knowingly or willingly provides false information on the ballot is subject to a fine of up to \$10,000, imprisonment for up to five years, or both.

How will USDA Make Certain that Every Eligible Person has the Opportunity to Vote?

Persons may call 1-888-729-9917 (toll-free) to request a ballot if they do not receive a ballot and they believe they are eligible to vote. These persons will be required to provide documentation of their eligibility to vote.

Executive Orders 12866 and 12988

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

In addition, this rule has been reviewed under E.O.12988, Civil Justice Reform. The rule is not intended to have retroactive effect and would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act allows producers, producer-packers, importers, and handlers (if covered by the program) to file a written petition with the Secretary of Agriculture (Secretary) if they believe that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with law. In the petition, the person may request a modification of the Order or an exemption from the Order. Petitions must be filed no later than two years after: (1) the effective date of the Order, provision, or obligation challenged in the petition; or (2) the date on which the petitioner became subject to the Order, provision, or obligation challenged in the petition. The petitioner will have the opportunity for a hearing on the petition.

Afterwards, an Administrative Law Judge (ALJ) will issue a decision. If the petitioner disagrees with the ALJ's ruling, the petitioner has 30 days to appeal to the Judicial Officer, who will issue a ruling on behalf of the Secretary. If the petitioner disagrees with the Secretary's ruling, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

Regulatory Flexibility Act and Paperwork Reduction Act

Final Regulatory Flexibility Analysis. In accordance with the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Agricultural Marketing Service (AMS) has examined the impact of this rule on small entities.

There are approximately 2,885 producers, 400 producer-packers, and

348 importers who currently pay assessments under the Order. In addition, there are 121 handlers who would pay assessments if the votable amendments to the Order are implemented. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5 million, and small agricultural producers are defined as those having annual receipts of not more than \$500,000. The majority of honey producers, producer-packers, importers, and handlers may be classified as small entities.

Previously, there were approximately 3,633 eligible voters in referenda on the honey program (2,885 producers and 400 producer-packers casting producer ballots and 348 importers casting importer ballots). Under this rule, there will be an additional 869 potential voters (400 producer-packers, 348 importers, and 121 handlers casting handler ballots).

This rule amends the referendum procedures under the Order in accordance with the 1998 changes to sections 4611 and 4613 of the Act. The procedures, as amended, will initially be used to conduct a referendum among producers, producer-packers, importers, and handlers to determine whether they favor implementation of the votable amendments to the Order. The authority to conduct this referendum is provided in section 4613 of the Act, as amended. The automatic amendments will become part of the Order regardless of the outcome of the referendum. USDA will also use the revised procedures for any subsequent referenda involving the continuation, suspension, termination, or amendment of the Order.

Section 4611(b) of the Act provides that the votable amendments to the Order must be approved by a majority of eligible voters who vote. The majority voting in the affirmative must also represent a majority of the quantity of honey and honey products produced, imported, and handled among all those voting. Section 4613(d)(1)(B) also directs that no individual provision of the proposed amendments to the Order shall be subject to a separate vote in the referendum.

Under section 4613(d)(2) of the Act, producers, producer-packers, importers, and handlers owing assessments on honey produced, or honey or honey products imported during the two calendar years preceding the referendum (the representative period) are eligible to vote in the referendum. Since the referendum will be conducted in 2000, the representative period for this referendum will be calendar years

1998 and 1999. Handlers will be allowed to vote in this referendum because section 4613(d)(3)(A) of the Act directs that producer-packers, importers, and handlers will be allowed to vote as if the votable amendments to the Order had been in place during the representative period.

Each current producer who produced honey in 1998 and 1999 will be entitled to cast one ballot which includes the number of pounds of honey produced during 1998 and 1999.

Each producer-packer will be entitled to one vote as a producer and one vote as a handler. The producer vote will include the number of pounds of honey produced in 1998 and 1999. The handler vote will include the number of pounds of domestic honey handled in 1998 and 1999.

Each handler will be entitled to one vote based on the number of pounds of domestic honey handled during 1998 and 1999.

Each importer will be entitled to cast two ballots, one for the handler portion of the assessments and one for the importer portion of the assessments. Each ballot will include the number of pounds of honey and honey products imported during 1998 and 1999.

USDA will keep the honey industry informed throughout the referendum process to ensure that they are aware of and are able to participate in the referendum. USDA will also publicize information regarding the referendum process, so that trade associations and related industry media can be kept informed.

Voting in the referendum is optional. However, if producer-packers, handlers, and importers choose to vote, the burden of casting a ballot would be offset by the benefits of having the opportunity to vote on whether they approve the votable amendments.

The information collection requirements related to this rule are described below and are designed to minimize the burden on producers, producer-packers, importers, and handlers voting in referenda.

The Secretary considered requiring eligible voters vote in person at various USDA offices across the country. The Secretary also considered electronic voting, but the use of computers is not universal. Conducting the referendum from one central location by mail ballot will be more cost-effective and reliable. The Department will provide easy access to information for potential voters through a toll-free telephone line.

There are no federal rules that duplicate, overlap, or conflict with this rule.

Paperwork Reduction Act. This rule will increase the information collection burden previously approved by OMB for the honey program referendum ballot by adding 869 additional potential voters (described above). As required by OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the revised referendum ballot was submitted to OMB and has been approved for use under OMB Number 0581-0093.

The estimated number of additional potential voters (respondents) indicated in the May 15, 2000, proposed rule has been increased from 550 to 869. This increase reflects a comment submitted by the Board which correctly pointed out that all 348 importers will be eligible to cast votes as handlers. Therefore, the estimated additional burden under the revised ballot has been revised as shown below.

Title: National Research, Promotion, and Consumer Information Programs.
OMB Number: 0581-0093.

Expiration Date of Approval: November 30, 2000.

Type of Request: Revision of a currently approved information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act. The increase in burden associated with the ballot is as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response.

Respondents: Handlers and producer-packers and importers voting as handlers.

Estimated Number of Respondents: 869.

Estimated Number of Responses per Respondent: 1 every 5 years (0.2).

Estimated Total Annual Burden on Respondents: 43 hours [343 hours (requested) - 300 hours (currently approved) = 43 hours (increase)].

The estimated additional annual cost of providing the information by 869 persons eligible to vote as handlers would be \$430.00 or \$0.50 per voter. The increase of 43 total burden hours has been added to the previous burden total of 300 hours under OMB No. 0581-0093.

Background

As stated above, Congress amended the Act on June 23, 1998. The amendments to the Act authorize the Secretary to make related changes to the Order after conducting an industry-wide referendum on the votable amendments.

The votable amendments would: (1) Require the National Honey (Board) to reserve 8 percent of its funds annually for beekeeping and production research; (2) authorize the Board to develop recommendations for purity standards and an inspection and monitoring system in order to enhance the image of honey and honey products; (3) add two handler members who are also importers to the Board; (4) decrease the producer assessment from 1 cent per pound to 0.75 cents per pound; (5) add an assessment of 0.75 cents per pound on handlers; and (6) increase the assessment rate on imports from 1 cent per pound to 1.5 cents per pound.

The following amendments will automatically be made to the Order regardless of the outcome of the referendum: (1) Changing the two importer/exporter positions on the Board to two importer positions; (2) eliminating the public member position; (3) revising nomination and eligibility requirements; (4) requiring that at least 50 percent of the Board members be honey producers; (5) providing authority for the Board to develop a voluntary quality assurance program with enforcement by USDA; (6) eliminating the requirement to file for an exemption under the program; and (7) removing obsolete language.

This rule allows producer-packers, importers, and handlers to cast ballots as handlers in the referendum on the votable amendments to the Order and in future referenda, if the votable amendments are approved. Previously, only producers, producer-packers in their capacity as producers, and importers were eligible to vote. In addition, the revised procedures specify that only producers, producer-packers in their capacity as producers, and importers will be eligible to vote in future referenda if the votable amendments are not approved in the upcoming referendum.

The amended referendum procedures in this final rule will replace Subpart—Procedure for the conduct of Referenda in Connection With the Honey, Research, Promotion, and Consumer Information Order (7 CFR 1240.200–1240.207). The revised subpart will be redesignated as Subpart C—Referendum Procedures and will include sections covering definitions, voting, instructions, subagents, ballots, referendum report, and confidential information. While the definitions for producer, producer-packer, and handler in the existing order will not change as a result of the February 28, 2000, proposed rule on amendments to the Order, the definition of importer in the referendum procedures will be changed

to be consistent with the proposed definition of importer in the Order.

In addition, this rule will redesignate Subpart—General Rules and Regulations (7 CFR 1240.100–1240.125) as subpart B.

Comments on the revised referendum procedures. In response to the May 15, 2000, proposed rule on these procedures, a producer, a honey industry group, and the Board submitted comments. All three comments expressed concern that there may be confusion regarding handlers' voting rights. They correctly pointed out that each voter is entitled to vote the poundage on which the voter would pay assessments if the amendments are approved in the referendum. Therefore, to clarify that handler ballots only include domestic honey, we have inserted the word "domestic" where appropriate in the supplementary information portions of this rule and in the definition of "eligible handler" in § 1240.201(e) of the procedures.

The Board's comment also expressed concern about handlers who also produce and import honey and about handlers who purchase honey from producer-packers or importers. This issue relates to the fact that a person may meet more than one voting criteria and may be eligible to cast more than one ballot. The Board also requested that AMS utilize three separate ballots. It has been determined that these comments do not require any additional changes to the referendum procedures, but AMS has decided to utilize three separate ballots. One ballot will be for producers and producer-packers covering the pounds of honey produced. A second ballot will be for the pounds of domestic honey handled by producer-packers and handlers. The third ballot will be for importers (including producers, producer-packers, and handlers who are also importers) and cover the pounds of foreign honey and honey products imported. Similarly, importers will also be entitled to cast a handler ballot for the handler portion of the assessments they would pay on imported honey and honey products if the votable amendments are approved.

The Board's comment also raised additional issues. The Board stated that the terminology in the Question and Answer Overview (Q&A's) incorrectly characterized the importer's voting rights as one vote as a producer and one vote as an importer. The comment quoted the Act which states that each importer shall have one vote as an importer and one vote as a handler. The comment has been adopted and the terminology corrected in the Q&A's and elsewhere in this final rule.

The Board also requested USDA to include the penalty for filing false information with USDA in the Q&A's, and this comment has been adopted.

In addition, the Board requested an explanation of the voting rights of cooperatives and producers who market honey through cooperatives. This comment has been adopted, and the Q&A's now include discussion on this subject.

The Board also requested that the number of ballots cast and the number of ballots determined to be invalid be included in the referendum report. Although this is information normally appears in the report, we have revised § 1240.206 to specify that the referendum report include this information.

Lastly, the Board requested USDA to publish the names of all voters on a web site for a period of two days following the voting deadline to allow persons to challenge voters via e-mail. Although USDA understands the value of a challenge process, the Act prevents the Department from adopting the comment. Section 12(d) of the Act states that "The ballots and other information or reports that reveal, or tend to reveal, the identity or vote of any producer, importer, or handler of honey or honey products shall be held strictly confidential and shall not be disclosed."

Adoption of proposed changes. This final rule adopts with change the amendments which were published in the May 15, 2000, proposed rule. The changes provide that handlers, producer-packers, and importers may cast ballots as handlers in the upcoming referendum on votable amendments to the Order. In addition, this rule revises the definition of importer so that the definition of this term is identical in the referendum procedures and in the amended Order. This rule also redesignates the rules and regulations subpart of the honey program as Subpart B and designates the referendum procedures as subpart C. As a result of comments received, this rule also slightly revises the definition of "eligible handler" to clarify that handlers vote on the basis of the domestic honey or honey products handled.

Additional USDA change. The Department has decided to change the name of the subpart containing these referendum procedures in the interest of plain language in regulations. The original name, which was also included in the May 15, 2000, proposed rule, was "Procedure for the Conduct of Referenda in Connection With the Honey Research, Promotion, and Consumer Information Order." This

final rule shortens the name to "Referendum Procedures."

List of Subjects in 7 CFR Part 1240

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Honey promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Part 1240 of Title 7, Chapter XI of the Code of Federal Regulations, is amended as follows:

PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION

1. Revise the authority citation for 7 CFR Part 1240 to read as follows:

Authority: 7 U.S.C. 4601–4613 and 7 U.S.C. 7401.

2. Revise the heading for Subpart—General Rules and Regulations to read as follows:

Subpart B—General Rules and Regulations

3. Designate Subpart—Procedure for the Conduct of Referenda in Connection with the Honey Research, Promotion, and Consumer Information Order as Subpart C and revise it to read as follows:

Subpart C—Referendum Procedures

Sec.	
1240.200	General.
1240.201	Definitions.
1240.202	Voting.
1240.203	Instructions.
1240.204	Subagents.
1240.205	Ballots.
1240.206	Referendum report.
1240.207	Confidential information.

§ 1240.200 General.

Referenda to determine whether eligible producers, importers, and, in the case of an order assessing handlers, handlers favor the continuation, suspension, termination, or amendment of the Honey Research, Promotion, and Consumer Information Order shall be conducted in accordance with this subpart.

§ 1240.201 Definitions.

(a) *Act* means the Honey Research, Promotion, and Consumer Information Act (Pub. L. 98–590; 98 Stat. 3115; enacted October 30, 1984; 7 U.S.C. 4601–4613, as amended) and any amendments thereto.

(b) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has

been delegated or may hereafter be delegated to act in the Administrator's stead.

(c) *Board or National Honey Board* means the Honey Board, the administrative body provided for under section 7(c) of the Act and established under § 1240.30.

(d) *Department* means the United States Department of Agriculture.

(e) *Eligible handler* means any person defined as a handler or producer-packer in the Order, or importer in this subpart, who handles domestic honey or honey products, and is covered by an order and subject to assessment on domestic honey handled during the representative period.

(f) *Eligible importer* means any person defined as an importer in this subpart, who is engaged in the importation of honey or honey products, and is subject to pay assessments to the Board on honey or honey products imported during the representative period.

(g) *Eligible producer* means any person defined as a producer or producer-packer in the Order who produces honey and is subject to pay assessments to the Board on such honey produced during the representative period and who:

(1) Owns or shares in the ownership of honey bee colonies or beekeeping equipment resulting in the ownership of the honey produced;

(2) Rents honey bee colonies or beekeeping equipment resulting in the ownership of all or a portion of the honey produced;

(3) Owns honey bee colonies or beekeeping equipment but does not manage them and, as compensation, obtains the ownership of a portion of the honey produced; or

(4) Is a party in a lessor-lessee relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce honey who share the risk of loss and receive a share of the honey produced. No other acquisition of legal title to honey shall be deemed to result in persons becoming eligible producers.

(h) *Importer* means any person who imports honey or honey products into the United States as principal or as an agent, broker, or consignee for any person who produces honey or honey products outside of the United States for sale in the United States, and who is listed as the importer of record for such honey or honey products.

(i) *Order* means the Honey Research, Promotion, and Consumer Information Order.

(j) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or

any other entity. For the purpose of this definition, the term partnership includes, but is not limited to:

(1) A husband and wife who have title to, or leasehold interest in, honey bee colonies or beekeeping equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and

(2) So-called *joint ventures* wherein one or more parties to the agreement, informal or otherwise, contributed land and others contributed capital, labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the production, handling, or importation of honey or honey products for market and the authority to transfer title to the honey or honey products so produced, handled or imported.

(k) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(l) *Representative period* means the period designated by the Secretary pursuant to the Act.

(m) *Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1240.202 Voting.

(a) *Eligibility.* (1) Each person who is, as defined in this subpart, an eligible producer; an eligible importer; or, in the case of an order assessing handlers, an eligible handler shall be entitled to vote in the referendum.

(2) In conducting a referendum for the sole purpose of determining whether persons favor the implementation of amendments to the Order in accordance with changes to the Act made by the Agricultural Research, Extension, and Education Reform Act of 1998 (Pub. L. 105-185, enacted June 23, 1998), producer-packers, importers, and handlers shall be allowed to vote as if:

(i) The proposed amendments to the Order were in place during the representative period; and

(ii) They were subject to assessment based on the quantity of honey or honey products handled during the representative period.

(b) *Number of ballots cast.* (1) Each person who is an eligible producer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast one ballot in the referendum: *Provided*, That each producer in a

landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce honey and/or honey products, in which more than one of the parties is a producer, shall be entitled to cast one ballot covering only such producer's share of the ownership.

(2) In the case of an order assessing handlers, each person who is an eligible handler, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast one ballot in the referendum.

(3) Each person who is a producer-packer, as defined in the Order, at the time of the referendum and during the representative period, shall be entitled to cast one ballot as an eligible producer and, in the case of an order assessing handlers, one ballot as an eligible handler.

(4) Each importer, as defined in the Order, at the time of the referendum and during the representative period, shall be entitled to cast in the referendum one ballot as an importer and, in the case of an order assessing handlers, one ballot as an eligible handler.

(c) *Proxy voting.* Proxy voting is not authorized, but an officer or employee of an eligible corporate producer; importer; and, in the case of an order assessing handlers, handler; or an administrator, executor, or trustee of an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that they are an officer or employee of the eligible entity, or an administrator, executor, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(d) *Casting of ballots.* All ballots are to be cast by mail as instructed by the Secretary.

§ 1240.203 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining:

(1) Whether the person voting, or on whose behalf the vote is cast, is an eligible voter; and

(2) The quantity of honey or honey products produced, imported, and, in the case of an order assessing handlers, handled.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the voting period, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as said agent may deem advisable.

(d) Mail to eligible producers, importers, and in the case of an order assessing handlers, handlers whose names and addresses are known to the referendum agent the instructions on voting; a ballot; and a summary of the terms and conditions to be voted upon. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the

presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1240.204 Subagents.

The referendum agent may appoint any individual or individuals necessary to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1240.205 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be questioned for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was questioned, by whom questioned, why the ballot was questioned, the results of any investigation made with respect to the questionable ballot, and the disposition of the questionable ballot. Ballots invalid under this subpart shall not be counted.

§ 1240.206 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, the number of ballots cast, the number of valid ballots, and other information pertinent to analysis of the referendum and its results.

§ 1240.207 Confidential information.

All ballots cast and their contents and all other information or reports furnished to, compiled by, or in possession of, the referendum agent or subagents that reveal, or tend to reveal, the identity or vote of any producer, handler, or importer of honey or honey products shall be held strictly confidential and shall not be disclosed.

Dated: July 26, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00-19942 Filed 8-3-00; 8:45 am]

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DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 1240**

[FV-00-701 PR2]

RIN 0581-AB84

Honey Research, Promotion, and Consumer Information Order; Proposed Amendments and Referendum Order**AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Proposed rule.

SUMMARY: This proposed rule would make a number of changes to the honey research and promotion program. The honey program is operated by the National Honey Board (Board) under the supervision of the Agricultural Marketing Service (AMS), an agency of the United States Department of Agriculture (USDA or the Department). The program is currently financed by assessments paid by honey producers, producer-packers, and importers. These amendments are authorized by amendments to the Honey Research, Promotion, and Consumer Information Act (Act). The Order needs to be amended as a result of these changes to the Act.

DATES: The voting period for the referendum will be September 5 through 29, 2000.

FOR FURTHER INFORMATION CONTACT:

Kathie M. Birdsell, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW, Room 2535 South Building, Washington, DC 20250-0244; telephone (202) 720-9917 (toll free); facsimile (202) 205-2800.

SUPPLEMENTARY INFORMATION: The honey research and promotion program will be changed by amending the Honey Research, Promotion, and Consumer Information Order (Order) (7 CFR part 1240). The changes to the Order are being made as a result of changes made by Congress to the Honey Research, Promotion, and Consumer Information Act (Act) (Pub. L. 98-690; enacted October 30, 1984; 7 U.S.C. 4601-4613, as amended) on June 23, 1998 (Pub. L. 105-185). The honey program operates under the Act.

Prior documents. A proposed rule on amending the Order was published in the **Federal Register** on February 28, 2000 (65 FR 10600) with a 60-day comment period. The comment period ended on April 28, 2000.

In addition, USDA published a proposed rule on the referendum

procedures which will be used in the referendum on the votable amendments in the **Federal Register** on May 15, 2000 (65 FR 30924) with a 30-day comment period. The final rule on the referendum procedures is being published separately in this issue of the **Federal Register**. Current producers, producer-packers, handlers, and importers who were also producers, producer-packers, handlers, and importers during 1998 and 1999 (representative period) will be eligible to vote in the referendum.

Question and Answer Overview*Why Is the Honey Program Being Changed?*

The honey program is being changed because the Act which authorizes the program was amended in 1998. The amendments to the Act require the same changes to be made to the program.

What Are the Major Changes That Would Be Made to the Honey Program?

The major changes affect (1) assessments under the program, (2) the composition and size of the National Honey Board (Board) which administers the program under Department of Agriculture (USDA) supervision, (3) the types of activities the Board may conduct, and (4) exemption and recordkeeping procedures.

How Would the Assessments be Changed?

The honey program is currently funded by an assessment of 1 cent per pound on honey produced in the United States and 1 cent per pound on imported honey and honey products. The assessment on domestically produced honey would be increased from 1 cent per pound to 1.5 cents per pound as follows: producers would pay 0.75 cent per pound (down from 1 cent per pound), and handlers would pay 0.75 cent per pound (a new assessment). Producer-packers would pay 1.5 cents on the U.S. honey that they produce and handle. The importer assessment would be increased from 1 cent per pound to 1.5 cents per pound to equal the new rate for domestic honey. Previously, there was no handler assessment. The industry must approve these changes in the referendum or they will not be made.

What Is the Purpose of the Assessment Increase?

The assessment increase would be needed to fund the additional Board activities that would be required if the industry approves them in the referendum. These extra activities include spending 8 percent of its income on production research and

developing purity standards and a monitoring system.

How Would the Size and Composition of the Board Change?

The Board is currently composed of seven producers, two importers (or one importer and one exporter), two handlers, one representative of a cooperative, one public member, and their alternates.

Regardless of the vote in the referendum, the importer-exporter positions on the Board will be changed to two importer positions to provide more importer input into Board deliberations. In addition, the public member position will be eliminated based on the amended Act.

If approved in the referendum, two handler-importer positions would be added to the Board. This would increase representation of handlers and importers on the Board in order to reflect their increased financial obligations under the program.

How will the activities of the Board change?

Regardless of the outcome of the referendum, the Board will be allowed to develop a voluntary quality assurance program that will be enforced by USDA.

If approved in the referendum, the Board would use 8 percent of its funds annually for beekeeping and production research to support U.S. honey producers. In addition, the Board would be allowed to develop purity standards and an inspection and monitoring system to enhance the image of honey and honey products for the benefit of the entire industry.

How would exemption and recordkeeping requirements change?

Producers, producer-packers, handlers (if covered by the program), and importers who sell (1) less than 6,000 pounds of honey annually and (2) the honey is sold through local retail outlets, such as roadside stands, farmers markets, or groceries will no longer have to request an exemption from the Board in order to avoid paying assessments under the program. In addition, producers would be required to keep records for a period of two years just like producer-packers, handlers, and importers. The Board and the Department need access to certain industry records in order to enforce the assessment and reporting provisions of the program.

Who will be allowed to vote on the amendments?

Current producers, producer-packers, and importers who were subject to

assessments in calendar years 1998 and 1999 will be allowed to vote in the referendum. In addition, current handlers who were in operation in calendar years 1998 and 1999 and would be subject to assessments if the changes to the program are made will also be allowed to vote.

How will the referendum be conducted?

The referendum will be conducted by mail ballot from AMS headquarters in Washington, D.C. AMS will mail ballots and voting information to all known producers, producer-packers, handlers, and importers on or before August 29, 2000. AMS will issue a news release when the ballots are mailed and again half way through the voting period to remind voters to submit their ballots. All of the amendments will be voted on as a package. The ballot will be postage-paid to save the voter the cost of mailing it to AMS.

Ballots must be received by AMS no later than Friday, September 29, 2000, in order to be counted in the referendum. Therefore, voters are encouraged to mail their ballots several days in advance of the deadline.

What do I do if I do not receive a ballot?

You may call the referendum agents at 1-888-720-9917 (toll-free) to discuss whether you are eligible to vote and to request a ballot and voting materials.

How many voters need to approve the amendments in order for them to become effective?

That depends on the number of ballots submitted. The votable amendments must be approved (1) by a majority of the eligible producers, producer-packers, handlers, and importers voting in the referendum and (2) that majority must have produced, handled, and imported 50 percent or more of the honey produced and handled and the honey and honey products imported by all eligible voters during 1998 and 1999.

How will AMS determine the number of pounds of honey that I produced, handled, or imported?

To simplify the voting process, each ballot for a producer, producer-packer, and importer will include the number of pounds of honey that the voter paid assessments in 1998 and 1999. The handler ballot will include an estimate of the number of pounds of honey the handler would have paid assessments on during that same period. This information will be provided to AMS by the Board.

If I produce, handle, and import honey, will I receive more than one ballot?

Yes. If you produce, handle, and import honey, you will receive three ballots: (1) one for the number of pounds of domestic honey that you produced in 1998 and 1999; (2) one for the number of pounds of domestic honey that you handled in 1998 and 1999; and (3) one for the number of pounds of foreign honey and honey products that you imported in 1998 and 1999.

Does that mean that I will pay three assessments if the votable amendments are approved in the referendum?

Yes. If you produce, handle, and import honey, you will pay: (1) 0.75 cent on each pound of domestic honey that you produce; (2) 0.75 cent on each pound of domestic honey that you handle; and (3) 1.5 cents on each pound of honey and honey products that you import.

If the voters approve the votable amendments, when will they take effect?

It is likely that all of the amendments would take effect on January 2, 2001. However, some of them would take several months to implement. For example, in order to make the changes in Board members, new nominations would have to be made by the National Honey Nominations Committee and submitted to the Secretary of Agriculture for consideration. This process takes several months. Therefore, it is possible that the new Board appointments would not be made until mid-2001. In addition, the U.S. Customs Service, which collects the assessments on imported honey and honey products, needs time to change the import assessment at all ports of entry. Therefore, it is likely that the new assessment rates would not become effective before April 1, 2001.

What happens if the honey industry does not approve the votable amendments?

If the honey industry does not approve the votable amendments, then only the non-votable amendments will take effect. This means: (1) The two importer-exporter positions on the Board will be changed to two importer positions; (2) the public member position will be eliminated; (3) nomination and eligibility requirements for handlers, importers, and representatives of cooperatives will become effective for the next term of office; (4) at least 50 percent of the Board members will have to be producers; (5) the Board could develop a voluntary quality assurance program

with enforcement by USDA; (6) small companies will no longer be required to file for an exemption under the program in order to avoid paying assessments; and (7) producers will be required to maintain records.

Executive Orders 12866 and 12988

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

In addition, this rule has been reviewed under E.O. 12988, Civil Justice Reform. The rule is not intended to have retroactive effect and would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act allows producers, producer-packers, importers, and handlers (if covered by the program) to file a written petition with the Secretary of Agriculture (Secretary) if they believe that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with law. In the petition, the person may request a modification of the Order or an exemption from the Order. Petitions must be filed not later than two years after: (1) The effective date of the Order, provision, or obligation challenged in the petition; or (2) the date on which the petitioner became subject to the Order, provision, or obligation challenged in the petition. The petitioner will have the opportunity for a hearing on the petition. Afterwards, the Secretary will issue a ruling on the petition.

If the petitioner disagrees with the Secretary's ruling, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

Regulatory Flexibility Analysis. In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has examined the impact of the proposed changes to the honey program on small honey producers, producer-packers, handlers, and importers.

The Small Business Administration (SBA) (13 CFR 121.201) defines small agricultural producers as those having annual receipts of no more than \$500,000. Small producer-packers, handlers, and importers fit into the SBA definition for small agricultural service firms with annual receipts of less than \$5 million.

According to National Honey Board (Board) records, 2,885 producers paid \$1,864,590 in assessments in 1999. That

represents \$646 in assessments on 64,600 pounds of honey per producer. At the average wholesale price for honey in 1999 of 65.5 cents per pound, the average producer had \$42,313 in receipts, well below the \$500,000 threshold.

Similarly, Board records indicate that 348 importers paid \$1,743,021 in assessments in 1999. That represents \$5,008 in assessments on 500,800 pounds of honey per importer. At the average wholesale price for honey of 65.5 cents per pound, the average importer had \$328,024 in receipts, well below the \$5 million threshold.

There are approximately 121 handlers and 400 producer-packers who would pay assessments on the domestic honey that they handle if the votable amendments to the Order are approved in the referendum. In 1999, 184,296,200 pounds of domestic honey were handled. At the average wholesale price for honey of 65.5 cents per pound, the value of that honey was \$120,714,011 or \$231,696 per handler or producer-packer, which is also below the \$5 million threshold.

Therefore, a majority of the producers, producer-packers, handlers, and importers who would be affected by the changes to the Order may be considered small entities. In addition, an estimated three handler/importer organizations whose membership includes these entities would be affected by the changes to the Order.

The votable amendments would add a 0.75 cent per pound assessment on honey handlers, decrease the producer assessment from 1 cent per pound to 0.75 cent per pound, and increase the assessment on imported honey from 1 cent per pound to 1.5 cents per pound. An assessment of 0.75 cent per pound represents only 1.1 percent of the 1999 average price of honey of 65.5 cents per pound (wholesale). The 1.5 cent per pound assessment on imports would be a 50 percent increase for importers. However, 1.5 cents represents only 2.3 percent of the 1999 average wholesale price. Therefore, the assessment changes are not expected to create a burden for small entities.

Basing projections on the assessments remitted or reported over the five-year period from 1995 to 1999, the Board would collect approximately \$4,860,000 in assessments annually, a \$1.3 million increase in revenue from assessments collected in 1999, if the amendments are approved.

The proposed amendments would have many benefits for the producers, producer-packers, handlers, and importers directly affected by them. They would also have benefits for

consumers and various segments of the marketing chain, including food service operators.

The non-votable changes in the nomination procedures for Board members would benefit handlers, importers, and marketing cooperatives by giving them increased input on the individuals who are nominated by the National Honey Nominations Committee (Committee). The proposed eligibility requirements for persons serving as importer members and alternates on the Board and the proposed requirement to eliminate the authority for an exporter to serve in an importer position on the Board would also benefit importers by providing them more representation on the Board and, thus, more input into Board decisions on how their assessment dollars are spent.

If the votable amendments are approved, importer representation would be further increased by the addition of two handler-importer members and alternates to the Board. These proposed positions would also give handlers increased representation on the Board, reflecting the fact that they would start paying assessments.

The non-votable change in the term of office for the Committee will greatly facilitate the ability of state beekeeper associations to submit nominees to serve on the Committee to USDA in a timely manner and help assure that the Secretary is able to appoint new members to the Committee prior to the beginning of the term of office. The non-votable requirement that 50 percent of the members of the Board must be producers reflects the amended provisions of the Act.

In addition, producers, handlers, and importers would benefit from the non-votable changes on reconstituting the Board. Reconstitution of Board members would be based on changes in the geographical distribution of honey production in the United States and on changes in the proportion of assessments paid on domestic honey and on imported honey and honey products, and this should provide more equitable treatment and fairness of representation on the Board for producers, handlers, and importers alike.

The votable amendment which would require the Board to reserve 8 percent of the assessments it collects on research to increase the efficiency of the honey industry and to enhance the image of honey and honey products has the potential to provide the consumer with new products; to provide beekeepers with better production methods; to ensure that any quality or purity

standards are fair to both the domestic industry and imports; and to add new markets for honey.

All segments of the honey industry could benefit from the non-votable amendments to implement a quality assurance program and a related inspection and monitoring system because they have the potential to increase wholesale and retail confidence in the quality of the honey that is marketed. This means that consumers, food service operators, and manufacturers would be likely to have more confidence in the quality of honey and honey products available on the market. This, in turn, is expected to generate increased sales of honey in the United States and abroad, which would benefit producers, handlers, and importers alike. Handlers would also have confidence in the purity of the honey they are buying from producers or importers.

The minimum purity standards and inspection and monitoring system that will be voted upon in the referendum have the potential to further increase confidence within the honey industry and among consumer and commercial buyers.

The non-votable amendment which would add reporting and recordkeeping requirements for producers would assist the Board in periodically collecting production information to help identify industry trends for use in program planning and evaluation. This information would help guide the Board in its decision making as well as be provided to industry members for their use in making individual marketing decisions. The amendment would also assist the Board in enforcing the assessment and reporting provisions of the Order which would help ensure that everyone who is subject to assessments is paying assessments.

The non-votable amendment that eliminates the requirement for persons who are eligible to claim an exemption to file an application for an application would significantly reduce the paperwork burden on the industry as well as reduce the Board's costs in managing the program.

The non-votable amendment which sets guidelines for the timing of referenda reduces the possibility that the operations of the Board will be disrupted so frequently that the effectiveness of the Board's programs would be compromised.

In addition, removing obsolete provisions from the Order would make the Order more understandable to the public, the industry, and the Board and its staff.

Paperwork and recordkeeping impact. The Transaction Report used in the assessment collection process would have to be revised to reflect the new assessments rates.

One non-votable amendment would require producers to maintain and make available to the Board and the Secretary books and records. Another would require producers to periodically report to the Board information pertaining to the quantity of honey produced and the total number of bee colonies maintained. Currently, only handlers, importers, and producer-packers are required to maintain records and provide reports to the Board or the Secretary. This information is necessary for enforcement of the Act. It is most likely that the information requested from producers would be obtained through periodic audits.

Based on this expanded reporting authority, there are also plans to collect information periodically from producers for statistical purposes. At this time, the Board's plans are tentative on how and when producers are to report the prescribed statistical information due to mailing costs and certain other factors relating to the content and design of the proposed information collection. The form or mailer for collecting the information will be submitted to OMB for approval prior to its use and the industry will be notified.

Another non-votable amendment would reduce the reporting burden for certain producers, producer-packers, handlers, and importers who qualify for exemption from assessment based on the quantity of honey or honey products produced, handled, or imported. Pursuant to the 1998 changes to the Act, the Order would no longer require individuals to file an application with the Board in order to attain exempt status.

The recordkeeping and reporting requirements related to the proposed amendments to the Order are designed to minimize the burden on producers, producer-packers, handlers, and importers. In addition, any information collection that cannot occur through forms already in use would pose a minimal additional burden.

The estimated total annual cost of maintaining records and providing the information to the Board and USDA by an estimated 5,873 respondents (5,000 producers, 400 producer-packers, 121 handlers, 348 importers, 3 handler/importer organizations, and 1 cooperative representative) would be \$40,839 or \$5.03 per producer, \$31.03 per producer-packer, \$26.36 per handler, \$0.11 per importer, \$15 per handler/importer organization, and

\$5.00 per cooperative representative, and represents an overall increase in burden for each of these groups.

The impact of the recordkeeping requirement provided for in this proposed rule on small entities would be minimal. This recordkeeping requirement is consistent with prudent business practices and should not impose any undue costs or significant burdens on a vast majority of the small entities affected. It is anticipated that a significant number of these small entities currently keep these records for commercial and/or tax purposes.

With regard to alternatives, the provisions of the amendments to the Order in this proposal have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements while maintaining consistency with the provisions of the Act, as amended.

The proposed forms to be modified would require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act, as well as the proposed amendments to the Order. The information required has been designed to coincide with normal industry business practices to minimize the burden on the industry.

There are no federal rules that duplicate, overlap, or conflict with this rule.

Paperwork Reduction Act. In accordance with the Office of Management and Budget (OMB) regulation (5 CFR part 1320) which implements the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. Chapter 35), AMS has submitted the information collection and recordkeeping requirements that may be imposed if the proposed amendments become effective to OMB for approval under OMB Control Nos. 0581-0093 and 0505-0001.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581-0093.

Expiration Date of Approval: November 30, 2000.

Type of Request: Revision of currently approved information collections for advisory committees and boards and for research and promotion programs.

Abstract: The proposed recordkeeping and information collection requirements are essential to carry out the intent of the Act, as amended.

In addition, there would also be a new burden on handlers voting for the first time in the upcoming referendum, and producer-packers and importers would be entitled to cast votes as handlers as well as producers or importers. The referendum ballot, which represents the

information collection requirements relating to the referendum, is addressed in the final rule on the referendum procedures which is being published separately in this issue of the **Federal Register**.

A non-votable amendment to the Order would increase the recordkeeping burden on producers. The Order currently requires handlers, importers, and producer-packers to retain their books and records for at least two years beyond the marketing year of their applicability. The Order would be changed to conform to the Act, as amended, by also requiring producers to maintain and retain books and records for two years. It is anticipated that producers already maintain and retain the books and records which contain this information for commercial and/or tax purposes. Therefore, this recordkeeping requirement is consistent with prudent business practices and should not impose any undue costs or significant burdens on a vast majority of producers.

Another non-votable amendment to the Order would add authority for the Board to require producers to maintain records and, at such time and such manner that the Board may prescribe, report information pertaining to the quantity of honey produced and the total number of bee colonies maintained. Currently, the Board's authority to request reports extends only to handlers, importers, and producer-packers. It is most likely that this information would be obtained from producers through periodic audits.

Based on this expanded reporting authority, the Board also plans to collect information periodically from producers for statistical purposes. At this time, the Board's plans are tentative on how and when producers are to report the prescribed statistical information due to mailing costs and certain other factors relating to the content and design of the possible information collection.

A votable amendment would impose a new 0.75 cents per pound assessment on handlers of honey and honey products, decrease the producer assessment from 1 cent to 0.75 cents per pound, and increase the assessment on imported honey and honey products from 1 cent to 1.5 cents per pound. If the amendments are approved in the referendum, the Transaction Report, which is currently used to report purchase and assessment information, would be modified to reflect the new assessment rates.

Information provided on the Transaction Report is collected under OMB No. 0581-0093. There would be a slight increase in the reporting burden

for handlers and producer-packers in order to complete additional assessment information covering their handling activity on the Transaction Report. However, the added reporting burden would be minimal. The extra information to be collected represents a small portion of the total information that handlers and producer-packers are already required to fill out and submit on the same form for each purchase.

The background information form used by the Secretary to determine if nominees to the Board are eligible to serve would be revised and submitted as a new form (AMS-755). It would be added to the information collection under OMB No. 0581-0093. This form is completed and submitted to USDA by individuals who are nominated for member and alternate positions on the Board.

To conform to the 1998 amendments to the Act, another non-votable amendment would revise qualification requirements for serving on the Board. This information would be collected on the Board's Candidate Profile (No. 4 below), and would be used by the Board's staff and the National Honey Nominations (Committee) to determine the qualifications of candidates to the Board. The Candidate Profile would be submitted as a new form and added to the information collection under OMB No. 0581-0093. It is anticipated that the basic background information to be collected would be readily accessible or otherwise maintained from records currently maintained by those persons who would be candidates to serve on the Board.

It should be noted that the amendments to the Order contained in this proposed rule would reduce the reporting burden for those producers, producer-packers, and importers who previously have been required to file an application with the Board in order to qualify for exemption from assessments. Based on the changes to the Act in 1998, persons subject to the Act would no longer be required to file an application for exempt status.

The estimated total annual cost of maintaining records and providing the information to the Board and USDA by an estimated 5,873 respondents (5,000 producers, 400 producer-packers, 121 handlers, 348 importers, 3 handler/importer organizations, and 1 cooperative representative) would be \$40,839 or \$5.03 per producer, \$31.03 per producer-packer, \$26.36 per handler, \$0.11 per importer, \$15 per handler/importer organization, and \$5.00 per cooperative representative, and represents an overall increase in burden for each of these groups.

The new recordkeeping requirement involving 2,700 hours for producers and producer-packers would be added to the program's recordkeeping burden under OMB No. 0581-0093. The previously approved recordkeeping burden totals 12,525 hours. This total is a miscalculation due to an overstatement in the number of respondents. Based on recalculation of the previous burden, the new annual recordkeeping burden would equal 5,451 hours, after including the additional 2,700 hours.

The estimated annual burden of 1,355 hours in providing additional information on the Transaction Report would be added to the previous burden under OMB No. 0581-0093. The previously approved burden totals 9,100 hours. However, this total is a miscalculation due to an overstatement in the number of respondents. Based on recalculation of the previous burden, the estimated new annual burden for completion of the Transaction Report would equal 8,128 hours, after including the additional 1,355 hours.

The estimated annual burden of 10 hours for completing the background information form (AMS-755) represents a new burden to be reported under OMB No. 0581-0093. The removal of the exemption application requirement would eliminate the estimated annual burden of 41.5 hours as reported under OMB No. 0581-0093. The estimated annual burden of 12.5 hours for completing the Candidate Profile represents a new burden to be reported under OMB No. 0581-0093 for the first time.

The provisions of the amendments to the Order in this proposal have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping or reporting costs or requirements.

The proposed forms to be modified would require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act, as well as the proposed amendments to the Order. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. These forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

The information required has been designed to coincide with normal industry business practices to minimize the burden on the industry. The information sought is not available from

other sources because such information relates specifically to persons covered by the Act and Order. Therefore, there is no practical method for collecting the required information without the proposed recordkeeping requirements and use of forms described in this rule.

The new recordkeeping requirement included in this proposed rule is:

(1) *A requirement for producers to maintain books and records to facilitate administration and enforcement of the Order.*

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per recordkeeper maintaining such records.

Respondents (Recordkeepers): Producers and producer-packers.

Estimated Number of Respondents (Recordkeepers): 5,400.

Estimated Number of Responses per Respondent (Recordkeeper): 1.

Estimated Total Annual Burden on Respondents (Recordkeepers): 2,700 hours.

Information collection requirements included in this proposed rule resulting in an increase or decrease in burden are:

(2) *A Transaction Report to be completed by first handlers, producer-packers, and importers.*

Estimate of Increased Burden: Public reporting burden for the collection of additional information from handlers and producer-packers is estimated to average an additional 3 minutes per each response [18 minutes (requested) – 15 minutes (currently approved) = 3 minutes (increase)].

Respondents: Handlers and producer-packers.

Estimated Number of Respondents: 521.

Estimated Number of Responses per Respondent: 52.

Estimated Total Annual Burden on Respondents: 8,128 hours [8,128 hours (requested) – 9,100 hours (currently approved) = 972 (decrease)]. Note: The previously approved burden of 9,100 hours is not correct due to an overstatement in the number of respondents. If the previous burden were recalculated based on 521 respondents, it would equal 6,773 hours. This means that the 8,128 hours now requested would represent an increase in burden of 1,355 hours instead of a decrease of 972 hours.

(3) *A background information form (AMS-755) to be completed by candidates nominated for appointment to the Board.*

Estimate of Burden: Public reporting burden for the collection of information from two nominees for each of the estimated five member and five

alternate position openings annually is estimated to average 0.5 hours per response.

Respondents: Producers, producer-packers, handlers, importers, and cooperative representatives.

Estimated Number of Respondents: 20

Estimated Number of Responses per Respondent: 1

Estimated Total Annual Burden on Respondents: 10.0 hours [10.0 hours (requested) – 0.0 hours (new form) = 10.0 hours (increase)].

(4) *A Candidate Profile form used by Board staff and the Committee to determine qualifications to serve on the Board.*

Respondents: Handlers and producer-packers.

Estimated Number of Respondents: 521.

Estimated Number of Responses per Respondent: 52.

Estimated Total Annual Burden on Respondents: 8,128 hours [8,128 hours (requested) – 9,100 hours (currently approved) = 972 (decrease)]. Note: The previously approved burden of 9,100 hours is not correct due to an overstatement in the number of respondents. If the previous burden were recalculated based on 521 respondents, it would equal 6,773 hours. This means that the 8,128 hours now requested would represent an increase in burden of 1,355 hours instead of a decrease of 972 hours.

The following information collection would be added by this rule:

(5) *A report from honey handler/importer organizations for certification of eligibility to nominate Board members.*

Estimate of Burden: Public reporting for this collection of information is estimated to average 1.5 hours per response for each organization.

Respondents: Honey handler and importer organizations.

Estimated Number of Respondents: 3.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 4.5 hours (new)

The following information collection would be eliminated by this rule:

(6) *A producer or importer application to be completed by producers and importers seeking exemption from assessment.*

Estimate of Burden: Public reporting burden for this collection of information from producers, producer-packers, and importers is estimated to average 0.083 hours per response.

Respondents: Producers, producer-packers, and importers.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 1.

Estimated Decrease in Total Annual Burden on Respondents: 41.5 hours [0.0 hours (form discontinued) – 41.5 hours (currently approved) hours (decrease) = 41.5 hours (decrease)].

Comments on the regulatory and paperwork impact of the proposed amendments to the Order were invited in the February 28, 2000, proposed rule. Three comments were submitted by the April 28, 2000, deadline.

One commenter believes that the estimated total annual cost of maintaining records and providing information to the Board and USDA, as stated in the February 28, 2000, proposed rule, is overstated. The commenter asserted that the estimated number of responses per respondent on the Transaction Report may be overstated. According to the commenter, Board records showed that the actual number of responses was 30 for each respondent rather than the 52. With 30 responses per respondents, the revised total annual burden on respondents for the Transaction Report would be 4,689 hours. This would be a decrease of 4,411 hours from the currently approved annual burden. The commenter's observation that importers do not complete the Transaction Report is accurate. The PRA section of the February 28, 2000, proposed rule incorrectly indicated that importers are required to complete the report. However, importers were not included in the calculation of the estimated total annual burden on respondents. The commenter's estimated number of responses is based on the number of Transaction Reports received last year, and the number of Transaction Reports submitted will likely change from year to year. Therefore, no change is made as a result of this comment.

Another commenter believes that the estimated total annual cost of maintaining records and providing information to the Board and USDA is too low. According to the commenter, the annual cost per producer of \$5.03 is low when considering the time involved in reading, studying, and writing comments regarding the proposed changes to the Order. However, the annual cost per producer only entails the actual time spent in maintaining and providing required information to the Board and USDA. This annual cost does not include the time spent by a commenter who voluntarily submits comments. Therefore, no change was made as a result of this comment.

Another commenter suggested that, for those who are both a producer-packer and a handler, the expense of

recordkeeping would be more than the actual assessment. This may be correct. However, every effort has been made to minimize the costs of maintaining records and providing information. Therefore, no change is made as a result of this comment.

A comment was received in which the commenter suggested that requiring producers and first handlers' to submit reports would be unnecessary. However, the requirement is necessary for enforcement. Without authority to require reports, it would be difficult to conduct compliance investigations. Therefore, no change is made as a result of this comment.

Background

As explained above, the Act, which authorizes the honey research and promotion program, was amended in 1998. Subsequently, the U.S. Department of Agriculture (USDA or the Department) requested interested persons to submit proposals for making comparable changes to the program, which operates under the Honey Research, Promotion, and Consumer Information (Order).

The National Honey Board (Board)—with the support of three honey industry groups—submitted a proposal containing regulatory text for all of the changes authorized or required by the 1998 amendments to the Act. Proposals submitted by eight other organizations or persons did not include regulatory text. Therefore, the Department published the Board's proposal, with a few changes, as a proposed rule in the **Federal Register** on February 28, 2000 (65 FR 10600), with a 60-day comment period. The eight other submissions were made part of the rulemaking record and are considered comments on the proposed changes.

Proposal

The Board proposed the following amendments to the Order:

In §§ 1240.1 through 1240.28 of the Order, definitions would be added for the terms "Department," "honey production," "industry information," "national honey marketing cooperative," "plans and projects," "qualified national organization representing handler interests," and "qualified national organization representing importer interests." Each of these new definitions was added to sections 4602 (19) through (24) of the Act as part of the 1998 amendments. Currently, the Order does not contain definitions for these terms. The definitions have also been arranged in alphabetical order for ease of reference.

Definitions would be revised for the terms "handle," "honey," "Honey Board," and "research." The definition of the term "handle" would be amended to exclude the purchase of honey or a honey product by a consumer or other end-user, which conforms to the revised definition set out in section 4602(7) of the Act.

The definition of the term "honey" would be modified to include comb honey. USDA has recognized in the past that the intent of the Act is to assess comb honey. This proposed revision would resolve any confusion in this area.

The term "Honey Board" would reappear under the definition heading of "National Honey Board" which then clarifies that the terms "National Honey Board," "Honey Board," and "Board" all refer to the National Honey Board created by the Act.

The definition of "research" would be revised to include studies that test the effectiveness of market development and promotion efforts as well as studies on bees as provided for in the 1998 amendments to section 4601(b) of the Act.

Section 1240.30 would be revised to change the composition of the Board to 14 members consisting of: seven producers; two handlers; two handlers who are also importers, if approved in referendum; two importers; and one representative (i.e., officer, director, or employee) of a national honey marketing cooperative. The public member position would be eliminated as well as specific representation for honey exporters. These changes are authorized by the 1998 amendments to section 4606(c)(2) of the Act. Except for the addition to the Board of two handlers who are also importers, these changes would become effective regardless of the outcome of the referendum. See also discussion on producer representation under *USDA Changes to Proposal*.

Presently, the Board has 13 members consisting of: seven producers; two handlers; two importers or one importer and one exporter; one cooperative representative; and one public member. The cooperative representative must be an officer or employee of a honey marketing cooperative but does not necessarily have to be from a "national" honey marketing cooperative.

Section 1240.31 would be revised to remove obsolete language regarding the length of the terms of office of the initial Board members. This section would also be revised to provide that terms of office be staggered periodically as recommended by the Board and as determined by the Secretary to maintain

continuity of Board membership and to avoid situations where a majority of the members' terms end at the same time. The Order currently provides for staggered terms only with respect to the seating of members on the initial Board. Section 4606(c)(8) of the Act as amended in 1998 provides for periodic staggering of Board terms. This amendment does not require approval in the referendum in order to take effect.

In § 1240.32 concerning nominations, a number of revisions would be made to conform the Order with the 1998 amendments to the Act with regard to the nomination process for Board members. For instance, references to state associations representing exporters would be deleted from § 1240.32(a) since section 4606(c)(2) of the amended Act no longer provides for exporter representation on the Board. Similarly, references to the Board member and alternate positions representing the general public would be removed from this section to correspond with the elimination of these positions by the 1998 amendments to the Act. References to the initial Committee formed after the Order was implemented as well as language on the first annual meeting of the Committee would also be deleted from § 1240.32 since such provisions are no longer relevant. Furthermore, as provided in section 4606(b)(2) of the amended Act, § 1240.32 would be amended to reflect the Secretary's authority to stagger the terms of Committee members. These revisions do not require approval in the referendum in order to take effect.

In addition, § 1240.32(a)(3) would be revised so that the term of office for Committee members would begin on July 1 instead of January 1. This change would accommodate the nomination of Committee members by state beekeeper associations, which often meet in the winter months. Currently, it is difficult for the associations to meet and elect their nominees, for the nominees to complete and submit background information forms, and for the Secretary to review the nominations and make a determination prior to the beginning of the term of office on January 1. Having the term of office commence on July 1 would allow adequate time for the nomination process to be completed prior to the beginning of the term. In addition, since the Committee's main meeting is usually in the fall, new members would be appointed by the Secretary in time to participate in that meeting if the term of office begins on July 1. This change would go into effect regardless of the outcome of the referendum.

Section 1240.32(b) would be revised with regard to the process the Committee would follow in considering recommendations of nominees and submitting nominations to the Secretary for handler, importer, handler-importer, and cooperative representative positions on the Board. Based on sections 4606(c)(2) (B) through (E) of the Act, as amended, the Committee would be required to consider the recommendations of "qualified organizations representing handler interests," "qualified organizations representing importer interests," and "qualified national honey marketing cooperatives." The requirements for qualification or certification of these organizations are set forth in section 4606(c)(6) of the Act. These requirements were added to the Act to ensure that the recommendations being made to the Committee would be from organizations that truly represent the various industry segments. If, in a given instance, there is not a qualified national organization that represents handler or importer interests, the Committee would consider the recommendations of individual handlers who have paid assessments on the honey they have handled or the recommendations of individual importers who have paid assessments on the honey they have imported. This revision would become effective regardless of the outcome of the referendum.

Currently, candidates for nomination to the Board for handler or importer positions may be recommended to the Committee by any industry organization that represents the interests of handlers or importers. There are no certification or qualification requirements that need to be met by the industry organization making the recommendations.

With regard to nominations for the cooperative position on the Board, the current Order does not provide a process whereby recommendations are initiated by qualified national honey marketing cooperatives. The current Order also does not limit cooperative nominations to persons affiliated with honey marketing cooperatives that are "national" in character. The current Order does require that the representative be an officer or employee of the cooperative. In contrast, the proposed revision of § 1240.32(b) would expand eligibility to include all directors of a cooperative's board. This takes into account the possibility that one may serve on the board of directors of a cooperative but not necessarily be an officer of the cooperative.

The Act, as amended, requires the Committee to make the following

nominations: (1) one producer member (and alternate) from each of the seven regions established by the Secretary; (2) two handler members (and two alternates) from recommendations made by qualified national organizations representing handler interests; (3) two importer members (and two alternates) from recommendations made by qualified national organizations representing importer interests; (4) two handler members who are also importers (i.e., handler-importers) and two alternates from recommendations made by qualified national organizations representing handler or importer interests; and (5) one member (and one alternate) who are officers, directors, or employees of a national honey marketing cooperative from recommendations made by qualified national honey marketing cooperatives. Therefore, this proposed rule would revise § 1240.32 of the Order to adopt this new Board composition and to remove the obsolete references to the current Board structure. The two handler-importer positions on the Board are subject to voter approval in the referendum before taking effect.

Section 1240.32(b) would also be revised to require that at least 75 percent of an importer's gross income generated by the sale of honey and honey products during any three of the preceding five years be from the sale of imported honey and honey products in order to be eligible for nomination to one of the importer member or alternate positions on the Board. This conforms to section 4606(c)(5)(B) of the Act as amended in 1998. Presently, the Order does not establish a minimum gross income level for importer member eligibility. This change would take effect regardless of the outcome of the referendum.

As mandated by section 4606(c)(4) of the Act, and not subject to voter approval in the referendum, § 1240.32(b)(6) in the proposal would be amended with respect to the administrative reconstitution of the Board if certain criteria are met. The 1998 amendments to the Act made changes in Board reconstitution requirements in order to provide more equitable treatment and fairness of representation on the Board. See discussion on Board reconstitution under *USDA Changes to Proposal* in which references to reconstitution of the Board would be moved from § 1240.32 to § 1240.33.

The proposal would require the Board to review every five years: (1) the geographic distribution of domestically produced honey assessed under the Order, (2) the changes in the annual

average percentage of assessments owed by importers under the Order relative to assessments owed by producers and handlers of domestic honey and honey products, and (3) whether there are any changes in the proportion of assessments owed on imports by importers and handler-importers.

As a result of this review, and if necessary to reflect changes in the proportion of domestic and imported honey assessed, the Board would recommend for the Secretary's approval changes in the regional representation of honey producers. And, if the proportion of assessments owed by handler-importers compared with the proportion of assessments owed by importers changed by more than 6 percent from the base period or if the proportion of assessments owed by importers compared with the proportion of assessments owed by producers and handlers of domestic honey and honey products changed by more than 6 percent from the base period proportion, the Board would recommend to the Secretary: (1) The reallocation of handler-importer member positions as handler positions; (2) the reallocation of importer member positions as handler-importer positions; (3) the reallocation of handler-importer positions as importer member positions; or (4) the addition of Board members.

For the initial review conducted by the Board, the base period proportions would be the proportions determined by the Board for fiscal year 1996. Otherwise, the base period proportions would be the proportions determined during the prior review.

Recommendations made by the Board shall be based on the five-year average of annual assessments, excluding the two years containing the highest and lowest disparity between the proportion of assessments owed from imported and domestic honey or honey products and whether any change in the average in the annual assessments is from the assessments owed by importers or the assessments owed by handler-importers.

The provision on Board reconstitution in § 1240.32(b)(6) of the current Order provides authority for the Board to review the fairness of representation on the Board among producer regions, but not the adequacy of representation among handlers and importers serving on the board. In addition, the criteria for evaluating representation on the Board are more permissive in the current Order when compared to the assessment-based criteria provided for in the proposed new version. Also, the current Order, while requiring the Board to conduct a review every five years, does not mandate that the Board

propose changes to representation among producer regions as a result of such review.

In § 1240.35 on Board meeting procedures, the quorum requirement would be changed from seven to eight members assuming the voters approve the amendments in the referendum allowing the size of the Board to increase from 13 to 14 members. This would maintain the practice that more than half of the Board members must be present at Board meetings for official Board action to be taken. Note, if the voters in the referendum do not approve the amendments, the number of Board members would decrease from 13 to 12 and the quorum requirement would not be raised. This would occur because the public member position would be eliminated regardless of the outcome of the referendum.

In § 1240.36, a grammatical change would be made, replacing the word "of" with the word "at" in the second sentence without changing the meaning. This change would go into effect regardless of the outcome of the referendum.

In § 1240.38, the Board's duty to investigate potential violations of the Order in paragraph (d) would be expanded to also include the authority to investigate violations of any rule or regulation implemented to carry out the Order. The Board would continue to be required to report any findings to the Secretary.

An editorial change would be made in § 1240.38(l) covering the Board's authority to appoint working committees. The provision currently states that members of committees be "drawn from" producers, handlers, importers, exporters, members of wholesale or retail outlets, or other members of the public. The proposed new language reads simply that the committees "may include" these representatives. This revision does not alter the eligibility of who is able to serve on working committees. This revision to § 1240.38(l) would go into effect regardless of the outcome of the referendum.

In addition, throughout § 1240.38 the words "plan" and "plans" are inserted in place of "project" and "projects" in certain instances. For example, the repeated use of the phrase "programs and projects" would read "programs and plans." In addition to programs and projects being closely synonymous in meaning and somewhat redundant when used together, the use of "plan" or "plans" better describes the Board's planning activities. Also, the term "industry information" would be inserted alongside the other permissible

program activities of research, promotion, and consumer education as provided for in section 4601(b)(1) of the amended Act and elsewhere. These changes to § 1240.38 would go into effect regardless of the outcome of the referendum.

In the text of § 1240.39 as well as the section title and the heading immediately preceding the section, "industry information" would be added to reflect the Board's authority to conduct this type of activity along with research, promotion, and consumer education. The addition of "industry information" as an authorized activity appears in section 4601(b)(1) of the Act and elsewhere. The word "programs" would also be added wherever the words "plans and/or projects" appear. This is consistent with the Act, which frequently uses the word "programs" in connection with research, promotion, industry information, and consumer education activities. These changes would go into effect regardless of the outcome of the referendum.

A new paragraph would be added to § 1240.39 authorizing the Board to conduct research designed to advance the cost-effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects relating to beekeeping, honey production, and honey bees. The Board believes that the proposed changes to the Order authorized by the 1998 amendments to the Act would strengthen the honey industry by expanding research in areas that would help solve production problems, reduce costs of production, and enhance the image of honey as a pure and natural product. Such research authority is specifically provided for in sections 4601(a) through (b) of the Act.

Another new paragraph would be added to § 1240.39 authorizing the Board to conduct activities which may lead to the development of new markets or marketing strategies for honey or honey products, as well as activities to increase the efficiency of the honey industry and to enhance the image of honey and honey products. The authority to conduct these activities is specifically provided for in section 4601(b)(1)(C) of the amended Act. This paragraph would become effective regardless of the outcome of the referendum.

Another new paragraph would be added to § 1240.39 to address the Board's authority to carry out activities and develop procedures for the inspection or monitoring of honey and honey products being sold for domestic consumption or for export from the United States. This includes the authority to develop minimum purity

standards. Sections 4607(a)(8) and 4607(b) of the amended Act provide specific authority for the Board to develop and conduct these activities. Any program involving the establishment of minimum purity standards as well as systems for inspection or monitoring of honey or honey products would be subject to prior approval by the Secretary. In addition, the Board's power to develop purity standards or inspection or monitoring programs that are mandatory must first be approved by voters in the referendum.

Sections 1240.39 and 1240.40 would be amended to allow activities to be funded with donations or other funds available to the Board in addition to assessment funds. Section 4606(e)(1) of the amended Act created the specific authority for the Board to accept voluntary contributions to finance expenses covered in its budget including activities in research, promotion, consumer education, and industry information as well as expenses for the administration of the Board. These changes to §§ 1240.39 and 1240.40 would go into effect regardless of the outcome of the referendum.

In § 1240.40 on budget and expenses, industry information would be included in the types of activities for which the Board is authorized to incur expenses based on its authorization as a permissible activity under section 4601(b)(1) and elsewhere in the Act. This revision does not require approval in the referendum.

Also in § 1240.40, a new paragraph would be added to require the Board to reserve at least 8 percent of all assessments collected each year for expenditure on research programs designed to advance the cost-effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects relating to beekeeping, honey production, and honey bees. The Board believes that the additional assessment funding for such research projects, including an 8 percent allocation for production research, would allow the industry to leverage its resources to make research both practical for and applicable to the industry's needs. Any allocated funds remaining at the end of the year would be carried forward for allocation and expenditure in subsequent years. The 8 percent figure was selected because it provides the funding level the industry felt would be adequate for the intended research. Allocating 8 percent of the Board's funds to this type of research is specifically provided for in section 4606(f)(2) of the amended Act. In order

to become effective, this provision must be approved in the referendum.

Section 1240.41 would be amended so that handlers as well as producer-packers in their capacity as handlers would pay assessments. Currently, only producers and importers as well as producer-packers in their capacity as producers are subject to assessment under the Order.

First handlers would be responsible for paying assessments on the honey they handle as well as collecting and remitting assessments from producers. The total assessment on honey produced in the United States would be increased from \$0.01 per pound to \$0.015 per pound. Payment of this total amount would be allocated among producers, handlers, and producer-packers. The assessment rate to be levied on producers for honey produced and handled would be \$0.0075 per pound of honey. This is a decrease from the current assessment rate of \$0.01 per pound paid by producers. A new assessment levied on handlers would be \$0.0075 per pound of honey handled. Producer-packers would pay a \$0.0075 assessment on the honey they produce as well as a \$0.0075 assessment on the honey for which they act as a first handler, even if the honey handled was from the producer-packer's own production.

The new assessment rates for producers, handlers, and producer-packers is authorized by section 4606(e)(3) of the Act. Sections 4608(a) and 4608(e) provide new requirements affecting first handlers with regard to the payment of the handler assessment as well as the collection and payment of the producer's assessment. These proposed changes to the Order at § 1240.41 covering the new assessment rates as well as the authority to subject handlers to assessment must first be approved in the referendum. If the amendments are not approved in the referendum, the current rate of \$0.01 per pound payable by domestic producers would remain in effect, and handlers would not be subject to assessment.

Section 1240.41 would also be revised so that the total assessment on honey and honey products imported into the United States would be increased from \$0.01 per pound to \$0.015 per pound in order to equal the combined rate paid by producers and handlers on domestic honey. Of this \$0.015 total, \$0.0075 would represent the assessment due from the importer, and \$0.0075 would represent the assessment due from a handler and paid by the importer on behalf of the handler. The full assessment on imported honey would be due at the time of entry of the honey

into the United States. The authority for increasing the assessment on imported honey is found in section 4606(e)(3)(B) of the Act and is subject to referendum approval before being implemented. If the amendments are not approved in the referendum, the current rate of \$0.01 per pound payable by importers on honey and honey products would remain in effect.

Section 1240.41 would also be amended so that importers are ultimately responsible for the payment of assessments in the event the U.S. Customs Service (Customs) did not collect the amounts owed at the time of entry. While the current Order makes reference to importers being subject to late payment charges, it does not expressly provide that importers are liable for paying the assessment directly to the Board if Customs fails to collect the amount. This change is authorized by section 4608(i)(2) of the Act. In addition, reference in the Order to the collection of assessments by the Secretary would be removed since the Secretary does not undertake the collection responsibility. These changes clarifying the Secretary's role as to assessment collection as well as the ultimate liability of importers for assessment payment do not require approval in the referendum.

Section 1240.41 would also be amended to make producers subject to late-payment charges and interest penalties on past-due assessments similar to handlers, importers, and producer-packers. Presently, the Order only mentions that a producer is responsible for payment of the assessment to the Board should the first handler fail to collect the assessment. Subjecting producers to late-payment charges and interest penalties for assessments owed to the Board would be consistent with the sanctions other program participants face for failing to pay amounts due to the Board. This change would go into effect regardless of the outcome of the referendum.

Since the honey price support loan program, as provided in the Agricultural Act of 1949 [7 U.S.C. § 1446(b)], has been discontinued, § 1240.41(g) of the current Order would be revised by referring to a more generic loan program. This generic reference would adequately accommodate any new recourse loan program or other loan program that might be developed by USDA's Farm Service Agency. The other features of this provision would not be changed. The Board's proposal would have this provision on loan programs appear at § 1240.41(m). However, see discussion under *USDA Changes to Proposal* in which this provision would

appear at § 1240.41(k). This change does not require approval in the referendum.

In § 1240.42 on exemption from assessment, an exemption would be added for handlers handling less than 6,000 pounds of honey per year. The 6,000-pound limit is identical to the exemption amount for producers, producer-packers, and importers. Providing the exemption for handlers conforms to section 4606(e)(4)(B) of the amended Act. This amendment would not take effect unless the referendum is approved.

In addition, § 1240.42(c) in the current Order would be removed. This section requires that a person file an application with the Board in order to receive an exemption from paying assessments. With the removal of this provision, no direct action would be necessary for a producer, producer-packer, handler, or importer to qualify for exemption, other than to maintain relevant records.

Based on the number of persons eligible to claim an exemption, eliminating the application requirement would significantly reduce the reporting requirement for applicants as well as the consequent recordkeeping demands on the Board's staff. The elimination of the exemption application requirement in § 1240.42(c) conforms to the 1998 amendments to the Act, which struck a similar provision from section 4606(e)(4)(B), as redesignated. This change would go into effect regardless of the outcome of the referendum.

A minor editorial change would also be made to § 1240.42 by inserting the word "United" to precede "States" for purposes of clarification and correctness.

The Board proposes that § 1240.43 of the Order be removed in its entirety. This section authorizes the payment of refunds to States operating a similar assessment program. Coverage of this same subject in § 1240.42(f) would also be stricken. Both § 1240.43 and § 1240.42(f) of the Order discuss how States operating programs similar to those authorized by the Act may obtain refunds of assessments from the Board. These provisions were originally included in the Order because a program existed in California at the time. Since the California program no longer exists, and no other similar State plans exist, the provisions in the Order referencing State plans are no longer relevant and therefore would be removed. The elimination of these provisions from the Order would take effect regardless of the outcome of the referendum.

The section on operating reserves at § 1240.44 in the current Order would be redesignated as § 1240.43.

A new § 1240.44 would be added to authorize the Board to develop and recommend to the Secretary a system or program for monitoring the purity of honey and honey products being sold for domestic consumption and for export. The authority to develop and carry out such programs, including the establishment of minimum purity standards, is based on sections 4607(a) through (b) of the amended Act. This section must be approved in the referendum to become effective.

A new § 1240.45 would also be added to authorize the Board, subject to the approval of the Secretary, to develop and implement a voluntary quality assurance program concerning purity standards for honey and honey products. Components of this program could include, among other things, the establishment of an official seal of approval to be displayed on honey and honey products which meet the standards of purity established under the program, actions to encourage persons in the honey industry to participate in the program, actions to encourage consumers to purchase honey and honey products containing the official seal of approval, and periodic inspections by the Secretary of honey and honey products of individuals who participate in the program. The components provided in this new provision parallel those set forth in sections 4607(a) and (c) of the amended Act. This section does not require approval in the referendum.

A new § 1240.46 would also be added to the Order authorizing the Board to recommend, subject to the Secretary's approval, the establishment of minimum purity standards for honey. Authority for this provision is based on section 4607(a) of the amended Act. This section must be approved in the referendum to become effective.

New §§ 1240.44, 1240.45, and 1240.46 would address concerns about the disparate quality of honey available to consumers as well as the need to maintain a positive and wholesome marketing image for honey and honey products.

Section 1240.50 would be revised to make producers subject to reporting requirements similar to handlers, importers, and producer-packers. This would cover producers subject to assessment as well as those currently exempt. In 1996, section 4608(f)(1) of the Act was amended to add recordkeeping and reporting requirements for producers. Requiring producers to be subject to reporting

requirements similar to others in the honey program would facilitate enforcement of the Order. Without this reporting requirement, it has been difficult for the Board to investigate producers for potential noncompliance with the Order. This reporting requirement would also assist the Board in periodically collecting production information to help identify industry trends for use in program planning and evaluation.

Section 1240.50 would also be revised to provide the Board the authority to request reports from producers and producer-packers on the quantity of honey produced and the total number of bee colonies maintained. This change is authorized by the 1998 amendments to the Act. Section 1240.50 already contains reporting requirements for handlers and producer-packers with regard to the total quantity of honey acquired or handled as well as the total quantity of honey imported in the case of importers. Section 1240.50 would also be revised so that these reporting requirements would include coverage for "honey products" in addition to "honey" as provided in the current Order for handlers, producer-packers, and importers. Section 4608(f)(1) provides authority for these changes.

The changes in reporting requirements in § 1240.50 involving producers, producer-packers, handlers, and importers would go into effect regardless of the outcome of the referendum.

In addition, § 1240.51 would be amended to require that producers as well as handlers, importers, and producer-packers maintain and make available for inspection their books and records. This applies to those subject to assessment as well as those currently exempt. Making producers subject to recordkeeping requirements similar to others in the program would facilitate enforcement of the Order. Without this requirement, it has been difficult for the Board to carry out compliance investigations against producers for possible violation of the Order. This change would go into effect regardless of the outcome of the referendum.

Section 1240.51 would also be revised to provide the authority for employees or agents of the Board or USDA to inspect the books and records of individuals subject to the Act and Order. The existing Order provides no authority for "agents" to inspect books and records. One reason for extending this authority to agents is to provide the Board the flexibility of utilizing the services of an outside auditing firm to assist with its compliance efforts. This change is authorized by section

4608(f)(2). This change would go into effect regardless of the outcome of the referendum.

In § 1240.52, a specific penalty would be added for persons convicted of disclosing confidential information. The penalty consists of a fine of up to \$1,000, imprisonment for up to 1 year, or both, as well as removal from office or employment. These proposed changes to § 1240.52 of the Order are authorized by section 4608(g) of the Act and do not require approval in the referendum.

In § 1240.61, a change was made to remove the word "projects" and replace it with the word "plans."

In § 1240.62 on suspension or termination of the Order, there would be a change to allow handlers, if subject to assessment, to vote in continuance referenda every five years or referenda on request as provided for in sections 4612(c) through (d) of the Act. This change would only go into effect if the referendum is approved. Obsolete provisions referring to the first continuance referendum would be removed regardless of the outcome of the referendum.

Section 1240.62 would also be revised with regard to petitions for referenda so handlers would be included in calculating the 10 percent which is needed for submitting a petition to have a referendum. The authority for this change is provided by section 4612(d)(1) of the Act and would only go into effect if the amendment making handlers subject to assessment is approved in the referendum.

Also added to § 1240.62 is a requirement that referenda at the request of the Board or by petition of program participants can be held no more than once every two years. If continuation of the Order is approved in a referendum held at the request of the Board or by petition, then the next periodic referendum to determine the continuation of the Order shall be held no sooner than five years from the date of the referendum on request. These changes are made pursuant to sections 4612(c) through (d) of the Act. These changes are not subject to approval in the referendum.

USDA Changes to Proposal

The Department has modified the Board's proposal to make it consistent with the Act when necessary as well as provide clarity, consistency, and correctness when appropriate with respect to word usage and terminology. For example, in some cases, references to "Honey Board" or "National Honey Board" were changed to "Board" for simplicity. In certain instances, gender-

specific references were replaced with gender-neutral language.

The Department did not change the title of the Order, as proposed by the Board, to include a reference to "industry information" for consistency with the Act's title which was not changed by the 1998 amendments to the Act. However, a subpart designation has been added to apply to §§ 1240.01 through 1240.67.

In the definition of "Act," the Department did not change the Act's name to reference "industry information" as proposed because, while the Act was amended, the title was not.

The Board proposed defining "National Honey Board" instead of "Honey Board" to include the Board's common reference. The Department retained "Honey Board" as the term defined but included "National Honey Board" as a synonym.

The definition of "part and subpart" was not changed to refer to the Order as it was proposed to be renamed by the Board.

The term "plans and projects" is not a new definition being added to the Order as indicated in the proposal. A definition for this term does appear in the present Order at § 1240.21. The proposal would amend the existing definition by adding the words "industry information" to the existing text.

A minor change in the definition of "Committee" was made for syntax and clarity.

In the definitions of "qualified national organization representing handler interests" at § 1240.23 and "qualified national organization representing importer interests" at § 1240.24, several section cross-references were added. A minor change was also made to the latter definition for purposes of syntax and clarity. In addition, portions of the text from each definition on eligibility requirements were moved to § 1240.32 on nominations and revised slightly for purposes of brevity and clarity. For example, "the association or organization" was shortened to "the organization" in almost every instance.

In the definition of "research" at § 1240.25, the words "products containing honey" were replaced with "honey products" for consistency with language in the Act and Order. The definition of "research" was also revised to add clarification to the proposal's reference to "studies on bees" in accordance with sections 4601(a)(9) through (10), 4601(b)(1)(C) through (D), and 4606(f)(2)(A) of the Act.

In § 1240.30 and elsewhere, the word “national” was placed in front of references to “honey marketing cooperative” to be consistent with usage of this term in section 4606(c)(2)(E) and elsewhere in the Act.

In § 1240.31 on terms of office, several changes were made in order to make the language consistent with USDA procedures and terminology, such as the substitution of gender-neutral language. Another revision added authority for the Secretary to make a determination on staggered Board terms individually. This change was made pursuant to language added to section 4606(c)(8) of the Act, which refers only to the Secretary’s authority in making determinations on staggered terms. In the last sentence following “alternate” in § 1240.31, the word “member” was stricken to parallel similar word usage elsewhere in the section.

In § 1240.32, subparagraph (b)(6) as it appeared in the proposal was stricken since it covers actions of the Board as opposed to actions of the Committee, which is the subject of § 1240.32. The text of former subparagraph (b)(6) would be reinserted, with several modifications, as a new § 1240.33 titled “Board reconstitution.”

A new provision was added to § 1240.32(b)(8) on the basic eligibility requirements for those nominated to fill Board seats as handler-importers. To be nominated for the handler-importer position, a handler must also have been an importer of record of at least 40,000 pounds of honey during any three of the preceding five years. These requirements are contained in section 4606(c)(2)(C) of the Act. The creation of two handler-importer positions on the Board must be approved in the referendum to become effective.

In § 1240.32(b)(9), changes were made to underscore the possibility that a full slate of nominees may not be submitted should Board members serve in staggered terms. The proposal and current Order use set numbers in terms of filling the different Board positions. The language is modified to better convey that the number of nominations will directly correspond to the number of positions due to become vacant.

In § 1240.32(b)(12), language was added providing that organizations seeking certification as a qualified national organization for purposes of making nomination recommendations must agree to notify nonmembers of Board nomination opportunities as well as consider the nomination of nonmembers interested in serving on the Board. This language was added to conform with section 4606(c)(6)(F) of the Act.

Finally, a new § 1240.32(b)(13) was added to state that the certification of an organization by the Secretary shall be final, pursuant to section 4606(c)(6)(C) of the Act.

A new § 1240.33 contains the text on Board reconstitution. This topic is currently covered under § 1240.32(b)(6) in the Order. The Board’s proposal to amend the Order also covers this topic in § 1240.32(b)(6). It is recommended that the subject of Board reconstitution be moved from § 1240.32 to § 1240.33 for purposes of organization and clarity. Section 1240.32 primarily covers the activities of the Committee and the nomination process for Board members. Board reconstitution covers the process whereby the Board evaluates possible changes in representation to the Board based on such factors as changes in the geographic distribution of honey producers, changes in the proportion of domestic and imported honey assessed, or the source of assessments on imported honey or honey products. It would be clearer from an organizational standpoint for this topic to be covered in a new § 1240.33.

In the new § 1240.33 covering Board reconstitution, the word “shall” was substituted in place of “may” before the word “recommend” in paragraph (b) of the proposed text to clarify the Board’s responsibility to move forward with reconstituting the Board if warranted by the results of the review. Section 4606(c)(4)(B) of the Act requires the Board to recommend reconstitution of the Board to the Secretary if certain criteria as provided in the section are met. A provision was also added to emphasize that, notwithstanding any action on reconstitution, at least 50 percent of the members serving on the Board shall be honey producers, pursuant to section 4606(c)(7) of the Act. Several other minor editorial changes were made including use of the word “continuance” in place of “continuation” in modifying referendum.

The Board’s proposal includes no modifications to § 1240.34 on vacancies. However, § 1240.34(a) needs to be revised to include the cross-reference to the new § 1240.33 on Board reconstitution in place of § 1240.32(b)(6).

Section 1240.34(a) of the existing Order provides an exception where a producer member or alternate serving on the Board may complete the term of office in situations where, due to Board adjustment of regions, the member or alternate is no longer from the region from which the person was appointed. Section 4606(c)(4) of the Act addresses changes in geographic regions for

producer representation and reallocation of handler, importer, and handler-importer positions on the Board. For purposes of consistency, the exception in § 1240.34(a) allowing producers affected by geographic redistricting to finish out their term would be extended to allow those members serving in handler, importer, or handler-importer Board positions to complete their terms in situations where their position is subject to reallocation by the Board.

In § 1240.38 on Board duties and in § 1240.40(a), a requirement was added that budgets be submitted to the Secretary for approval 60 days in advance of the beginning of the fiscal period. The Act and current Order do not specify any time frame for submitting the budget to the Secretary. The 60-day period formalizes current USDA policy and allows adequate time for review and approval prior to the start of the fiscal period. A minor change was made to § 1240.38(e) by inserting “consumer” to precede “education” and deleting the word “development.” And “industry information” was added to the list of allowable program activities in § 1240.38(l) as provided for in 1998 amendments to the Act.

Several changes were made to the Board’s proposal involving § 1240.39. A paragraph was added providing that the Board shall conduct “an independent evaluation” of the effectiveness of the Order and its programs at least once every five years. This requirement appears in Commodity Promotion and Evaluation [7 U.S.C. 7401]. Section 1240.39(e) of the current Order does contain a provision on periodic program evaluations; however, it does not require that the review be conducted by an independent source.

As a result of adding the paragraph on independent evaluations, the paragraphs in § 1240.39 were redesignated.

Also in § 1240.39, the proposed provision on activities and procedures for monitoring the purity of honey and honey products was modified by striking the words “and prevention” from the phrase “including programs or activities for identification and prevention of adulterated honey.” Pursuant to section 4607(b)(2) in the Act, the Board has the authority to “develop and recommend . . . a system for identifying honey.”

Finally, the phrase “research, education, industry information, and promotion” in § 1240.39 of the proposal was replaced with “research, promotion, consumer education, and industry information” to be consistent

with similar references elsewhere in the section.

In § 1240.40(a), the words “industry information” were added to “research, promotion, and consumer education” to be consistent with similar references elsewhere in the provision.

In § 1240.40(c), the word “projects” was not changed to “plans” as suggested in the proposal. The word “projects” is retained so as to mirror the same language in section 4606(f)(2) of the Act on this point.

Section 1240.41(a) of the current Order and the proposal was removed because it is not necessary.

In the discussion of assessment rates in § 1240.41, changes were made to clarify that handlers, importers, and producer-packers are subject to assessments for both honey and honey used in honey products while producers are assessed only on honey produced. This is based on section 4606(e)(3) of the Act. “U.S.” was added where necessary to specify honey produced domestically versus honey produced outside the United States.

Discussion of the assessment rate on imported honey and honey products was expanded for purposes of clarification. For example, one change clarifies that importers must pay assessments through Customs to the Board. Both the current Order and the proposal provide that the importer is required to pay the assessment to the Board at the time the honey or honey products enter the United States. There is no specific mention of Customs acting as the payment intermediary. Congress made a similar clarification in section 4608(c) of the Act.

In § 1240.41, language on the prescribed interest rate set by the Board and approved by the Secretary was removed and replaced with language specifying that the rate of interest shall be prescribed in regulations issued by the Secretary.

A new paragraph (i) was added to § 1240.41 specifying that persons failing to remit assessments in a timely manner may also be subject to actions under federal debt collection procedures.

Finally, in § 1240.41 on government loan programs, the “USDA Commodity Credit Corporation” was substituted for “CCC,” and other minor changes were made to the sentence to accommodate this change. Also, “USDA” was inserted before “loan program” in the first sentence for purposes of clarity. This provision was redesignated from § 1240.41(m) in the Board’s proposal to § 1240.41(k).

Paragraphs (j) and (k) in § 1240.41 of the Board’s proposal were redesignated as paragraphs (l) and (m) of § 1240.41.

In § 1240.42(a) on exemption from assessment, the words “or honey products” were added to the exemption language since the calculation of the 6,000 pound minimum amount to qualify for exemption from assessment can include both honey and honey products in the case of producer-packers, handlers, and importers. This is consistent with section 4606(e)(4)(A) of the Act as amended in 1998. In § 1240.42(c), the reference to a person who “claims” an exemption was replaced with language referring to a person who has been exempt. This change was made because section 4606(e)(4) of the Act eliminated the requirement of filing a claim with the Board as a prerequisite to being exempt from assessments. Several other minor changes in word order and phraseology were also made.

In § 1240.44 on activities involving the inspection and monitoring of honey, the words “and the Secretary shall have the authority to approve or disapprove” were added to mirror similar language in section 4607(d) of the Act and to underscore the Secretary’s oversight authority. The proposal provides that the Board is “authorized to develop and recommend to the Secretary” a system or program for monitoring the purity of honey. However, the Board’s proposal contains no mention of the Secretary’s authority to approve such system or program as is provided for in the 1998 amendments to the Act.

Also in § 1240.44, the words “or program” were inserted to follow the word “system” in several instances for purposes of consistency throughout the section. Also, several other minor changes in punctuation were made to follow similar construction in section 4607(b) of the Act.

In § 1240.45, language regarding the Secretary’s authority to approve or disapprove the establishment of a voluntary quality assurance program was inserted to be consistent with similar language in section 4607(d) of the Act and to underscore the Secretary’s authority on this point. A paragraph was also added providing that a producer, handler, or importer must participate in the voluntary quality assurance program in order to be eligible to display the official seal of approval. This addition is based on sections 4607(c)(2)(A) and (c)(3) of the Act. Finally, a provision was inserted to provide that a voluntary quality assurance program and any related rule or regulation for its development and operation may be “in addition to or independent of” any program, rule, or regulation involving an inspection and monitoring system established under

the authority of § 1240.44. This language was taken from sections 4607(a)(8) and (c)(1) of the amended Act.

In § 1240.46 on minimum purity standards, the words “develop and” were inserted before “recommend” and “and related rules and regulations” were added to immediately follow “minimum purity standards” for consistency with section 4607(a)(8) of the Act.

In § 1240.50, minor grammatical corrections were made. Also, the articles “the” and “a” were inserted at various points in the text.

In § 1240.51 on books and records, a change was made in reference to those subject to exemption since it is no longer necessary to file a claim with the Board in order to be exempt from assessments. In addition, the word “agent” was added for use with employees since section 4608(f)(2) of the amended Act provides authority for employees or agents of the Board or USDA to inspect and review books and records.

In § 1240.52 on confidential treatment, a revision is made so that the confidentiality provisions with respect to books, records, or reports would apply to officers and employees of the USDA and employees and agents of the Board. Members and alternates of the Board are specifically excluded from inspecting or reviewing books and records under section 4608(f)(2) of the amended Act in the first place. This change is authorized by section 4608(g)(1) of the amended Act. Presently, the Order as well as the Board’s proposal extend the confidentiality provisions to “any person.”

In § 1240.52(a), a minor edit was made substituting the word “the” in place of “a” to precede “number.”

Section 1240.52(c) of the proposal, which covers the penalties for disclosure of confidential information, was removed. The specific penalties for violating the confidentiality provisions of the Act and Order, as provided for in section 4608(g) of the Act, are self-executing and, therefore, are not included in the Order.

In § 1240.62 on the suspension or termination of Order, several minor revisions were made such as adding “(5)” after the word “five” and adding “(2)” after the word “two”. Also the phrase “subject to assessment under the Order” was inserted in both paragraphs (b) and (c) to provide greater clarity and completeness.

Comments

A total of 30 comments were received on the proposed amendments. These

include the original eight comments that were received in response to USDA's request for proposals in 1999, some of which were resubmitted by the commenter. Seventeen (17) commenters supported the amendments, 12 commenters opposed one or more of the amendments, and one commenter merely expressed an opinion on the direction the Board should take.

Twenty-seven (27) of the comments contained several recommendations, a number of which have been adopted. For the aspects of the comments that deal with the paperwork impact of the proposed changes to the Order, see the Regulatory Flexibility Act and Paperwork Reduction Act section of this proposed rule.

One comment was received from a commenter suggesting that a definition for "handler-importer" be included in the Order. The commenter recommended that this definition be added in order to clarify the representation requirements for a handler who also must meet certain import thresholds to qualify for nomination to the Board. The definition is also needed, according to the commenter, because the term "handler-importer" is used in several sections of the proposed Order. We accept the commenter's definition of "handler-importer" and have included it in the definitions as § 1240.10. Section numbers for all other definitions have been revised to account for the addition of this new definition.

A comment was submitted on § 1240.08 which defines the term "handle." The commenter requested an explanation of what it means to sell honey and what is meant by "a current of commerce." The term "handle" as defined in the proposed Order and Act is clear, and we find no reason to change the definition by revising or adding to general and common terms contained in the definition.

A comment was submitted on § 1240.12 which defines the term "honey production." The commenter requested that the definition address the differences in organic and generic honey production. No change is made as a result of the commenter's request as the definition for "honey production" encompasses all beekeeping operations, which includes organic operations.

One comment was submitted on § 1240.26 which defines the term "research." The commenter suggested that the definition should clearly indicate that all research activities are to be directed to domestic honey. However, the Act does not specify that research is to be directed to domestic honey. In addition, the funds that would

pay for research would come from both domestic and import assessments. Research on imported honey may be needed in developing the proposed inspection and monitoring system, voluntary quality assurance program, and minimum purity standards. Therefore, no change to the term "research" was made as a result of this comment.

A comment was submitted on § 1240.32 which addresses nominations to the Board. The commenter suggested that wording be added to the section that would specify that state associations should be industry related rather than simply social associations which may be interested in the honey industry. The commenter requested that associations' articles of incorporation or bylaws be verified to prove they are industry related associations. The word "beekeeper" has been added so that "State association" reads "State beekeeper association" in § 1240.32 (a)(1) as a result of the comment. This change provides that only State beekeeper associations may nominate individuals to serve on a National Honey Nominations Committee.

One commenter requested that for clarity and consistency in § 1240.32 (b)(7) the word "such" be changed to "a." This comment has been adopted by changing "such" to "an," which is more grammatically correct.

A comment was received on § 1240.32 (b)(11) which outlines the criteria for an organization to be certified as a qualified national organization representing importer interests. The commenter suggested that criterion (iv) is too general in stating only that "geographic territory" be covered by the active membership of the organization. The commenter notes that a national organization should have members from across the nation. We agree with the commenter's suggestion and language to § 1240.32(b)(11)(iv) has been added that "substantial geographic territory" must be covered by the active membership of a national organization.

A comment was received on § 1240.32 (b)(12)(i) which requires national handler and importer organizations, that are qualified to submit recommendations for nominations, to notify handlers or importers who are not members of the organizations of opportunities for nomination to the Board. The commenter requested clarification as to exactly what type of notification must be given to nonmembers. The commenter suggested that a mailing from the Board or general notices in trade publications could sufficiently notify nonmembers. We agree that the requirement to notify

nonmembers of nomination opportunities is not specific. Further, the commenter's suggestion of Board mailings and trade publication notices may be valid methods of notification. However, specifying means by which notification must be given would limit the methods open to organizations. For this reason, the Order is flexible in outlining the methods of notification so that organizations have the opportunity to notify nonmembers in the method that they deem most effective. However, wording was also added to § 1240.32 (b)(12)(ii) to clarify the requirement of notification of handlers or importers who are not members of the organizations of opportunities for nomination to the Board.

A second comment was received on § 1240.32(b)(12)(i). The commenter requested a change to this section that would clarify that qualified national organizations are not required to notify nonmembers of upcoming Board nomination opportunities. The commenter was concerned that wording in the Order implies that every member of the general public must be notified. The commenter asserted that notification through the trade press or other sources should be used and provides specific wording to be added to the Order. We agree that notification to every nonmember of qualified national organizations is not feasible and have added wording as discussed in the previous comment. However, as stated in the previous comment, it would not be appropriate to require a specific mode of notification.

A comment was received on § 1240.35(a) which outlines Board procedure. The commenter requested that the requirement of the number of members needed to constitute a quorum be changed from "eight" to "a majority" of members. The commenter suggested that this change will allow the Board size to be modified, as needed, without specifically changing the number required for a quorum. Since eight members are a majority of the proposed 14 member Board, this comment is accepted, and the section has been revised, as appropriate.

Another comment was submitted addressing § 1240.35(a). The commenter recommends that at least 50 percent of the Board members present to constitute a quorum be producers. The commenter notes that an amendment to the Act provides that at least 50 percent of the members to the Board be producers and that this concept should be applied to the quorum requirements for Board meetings. We agree that a quorum should reflect the membership of the Board, and, therefore, at least 50 percent

of the members present at the meeting should be producers. In response, wording in this section has been changed as appropriate.

One comment was received on § 1240.38(k) which describes the Board's duties. The commenter suggested that this section should include the category "handler-importers" in the list of those to be notified by the Board of all Board meetings. The commenter was correct in noting that this section needed to be revised to account for the changes in Board membership. Therefore, the section has been revised accordingly.

One comment was submitted on § 1240.39(a)(2). The commenter noted that wording contained in the Order restricts the Board from engaging in quality control or grade standards. In light of the proposed amendments, we agree that the wording in this section should be changed. Therefore, references to quality control and grade standards were deleted.

Two comments were received in respect to § 1240.41(k) which addresses the process under which an assessment will be deducted on honey subject to a USDA loan program. The commenters requested that a provision be made that the assessment only be deducted from the proceeds of a loan or the loan deficiency payment if it is a non-recourse loan. One commenter suggested that wording in the Order may be confusing as to the collection of assessments on honey subject to a USDA loan program. The commenters assert that § 1240.41(k) only applies to loans in which collection from the assessment comes into question. We agree that no question exists on loans marketed through some channel of commerce. It is only when the producer forfeits the right to the product that the assessment would be deducted from the loan payment by USDA. Currently USDA only administers a recourse loan program for honey. Therefore, no change is made as a result of the commenter's request, that "non-recourse" be added to this section following "USDA" and before "loan." The general reference to a USDA loan program contained in the Order sufficiently accounts for any new recourse, non-recourse, or other loan program that may be developed by USDA's Farm Service Agency.

One comment was received on § 1240.42(d) which describes exemptions from assessments. The commenter suggested that terminology be added to clarify that the Board's authority to recommend exempting exported honey from assessments be limited to exported domestic honey. No

change is made as a result of this comment as the Order does not currently provide for the exemption of any exported honey from assessments. The commenter's proposed provision would need to be addressed by the Board if a recommendation is made for exempting exports from assessments. This same commenter submitted additional comments on § 1240.42 which are not addressed here as they were not applicable to the 1998 amendments to the Act or proposed changes to the Order but simply expressed opinions.

There were several comments on the proposed quality assurance program, purity standards, and inspection and monitoring system. Importers and persons with interests in foreign honey and honey products suggested that the purity standards could be viewed as non-tariff trade barriers and undermine U.S. policy which seeks to remove tariff and non-tariff trade barriers. We disagree. Both domestic and imported honey would be subject to the same standards. In addition, none of these provisions can be implemented without public rulemaking on the details of the programs.

These commenters also contend that an inspection and monitoring system would allow the Board to usurp the authority of the Food and Drug Administration (FDA). They requested that a provision be added that would require a comprehensive international study to be conducted by scientists from FDA before purity standards are implemented. We accept the basic concept of the recommendation that any system or program for monitoring the purity of honey and honey products should have fair and equal test parameters for domestic and imported honey. We also agree that any purity standards should be based on scientific studies of honey from the United States and each country of origin for foreign country. Therefore, we have revised §§ 1240.44 and 1240.46 accordingly. Regarding the request that the FDA conduct a global study on honey, we have not adopted this portion of the recommendation as the Act authorizes, under the honey program, an inspection and monitoring system, if approved in a referendum.

An importer also commented that the Board is not capable of carrying out an unbiased quality assurance or purity program. We disagree. In addition, the Board will be authorized to make recommendations to the Secretary, and the Secretary is not required to approve the recommendations. Further the amended Act authorizes USDA inspectors to carry out this function.

A domestic producer commented that any quality assurance or purity monitoring program would discriminate against domestic producers because it would not be feasible to conduct inspections in foreign production areas. The commenter's request is addressed by a change made in response to another comment in which wording has been included that any system or program for monitoring the purity of honey and honey products should have fair and equitable test parameters for domestic and imported honey. In addition any such systems and programs would have to be approved by the Secretary prior to implementation.

One comment was submitted on § 1240.50(a) which outlines the reports required of each handler, importer, producer, or producer-packer. The commenter suggested that the term in this section "producer-packers" should be changed to "producers-packers." We find that the present wording is grammatically correct. Consequently, no change to the Order is needed as a result of this comment.

Comments were submitted on § 1240.51 which deals with books and records to be kept by those subject to the program. One commenter proposed that books and records be required to be maintained for seven years rather than the two years presently required. Though changes were made to this section as a result of the 1998 amendments, there was no change made regarding the time period requirement for maintaining books and records. Therefore, no change is made as a result of this comment.

Another comment was submitted on § 1240.51. The commenter stated that the wording in this section could suggest that any person exempt from assessments, including those not involved in the honey industry, are required to maintain books and records. The commenter proposed that "under this subpart" be added for clarification. We accept this commenter's suggestion and have added the suggested wording.

In addition, commenters made a number of recommendations which cannot be adopted because they are inconsistent with or not authorized by the amended Act. These recommendations include: require promotion of U.S. honey; change the referendum voting criteria; increase the statute of limitations for filing a petition under section 4609 of the Act from two years to 10 years; remove the definition of a national honey marketing cooperative; add changes to the definition of "exporter," "honey production," "marketing," "producer," and "promotion" allow only producers

to serve on the Board; require that handlers and producers who are eligible to serve on the Board obtain a majority of their income from honey production; increase representation of importers on the Board; have two referenda (one for producers and importers and one for handlers); raise the import assessment up to 15 cents per pound; make the handler responsible for payment of the producer assessment should the first handler fail to collect from the producer; do not allow the quality assurance program to include a seal of approval; do not eliminate the public member position; do not add two handler-importer members to the Board; change the two handler positions on the Board to two producer-packer positions; do not eliminate the authority for one of the importer positions to be filled by an exporter; do not allow the Board to develop and implement a quality assurance program or an inspection and monitoring system; and do not allow the Board to collect information from producers.

In addition, some of the commenters' recommendations relate more to the regulations which would be developed to implement the quality assurance program. These regulations would be recommended by the Board, published for public comment by the Secretary, and then, if approved by the Secretary, would be implemented. The persons who submitted these comments can express their views to the Board as it develops the implementing regulations and participate in the rulemaking process that will follow.

There were also several recommendations that relate to the regulations that would be developed to implement the authority to develop purity standards and a monitoring and inspection system. If these amendments are approved in the referendum, the implementing regulations would also be recommended by the Board, published for public comment by the Secretary, and then, if approved by the Secretary, would be implemented. The commenters can exercise their right to vote in the referendum on these votable amendments. Then, if the amendments are approved, they can make their views known to the Board and participate in the rulemaking process.

In summary, a new § 1240.10 has been added and §§ 1240.32(b)(7), 1240.32(b)(11)(iv), 1240.32(b)(12)(i) and (ii), 1240.35(a), 1240.38(k), 1240.39(a)(2), 1240.41(k), 1240.44(b), 1240.46, and 1240.51 have been revised as a result of comments received that were deemed to have merit.

Referendum Order

It is hereby directed that a referendum be conducted among eligible honey producers, producer-packers, handlers, and importers to determine whether they favor amending the Honey Research, Promotion, and Information Order (Order). Current producers, producer-packers, handlers, and importers who produced, handled, and imported honey or honey products during 1998 and 1999 (representative period) and are not exempt from assessments are eligible to vote in the referendum.

The voting period for the referendum will be from September 5 through 29, 2000. Ballots will be mailed to all known honey producers, producer-packers, handlers, and importers on or before August 29, 2000. Eligible voters who do not receive a ballot by mail should call the following toll-free telephone number to receive a ballot: 1-888-720-9917. All ballots will be subject to verification. Ballots must be received by the referendum agents no later than September 29, 2000, to be counted.

Martha B. Ransom, Margaret B. Irby, and Kathie M. Birdsell, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2535-s, Stop 0244, Washington, DC 20250-0244, are designated as the referendum agents of the Secretary to conduct the referendum. The Referendum Procedures (7 CFR 1240.200 through 1240.207) issued under the Order and published separately in this issue of the **Federal Register** will be used to conduct the referendum.

In the referendum, the voters will vote on whether the following amendments should be made to the Order: (1) Require the Board to reserve 8 percent of its funds annually for beekeeping and production research; (2) allow the Board to develop recommendations for purity standards and an inspection and monitoring system to enhance the image of honey and honey products; (3) add two handler-importers to the Board; (4) decrease the assessment honey producers pay from 1 cent per pound to 0.75 cents per pound; (5) add an assessment of 0.75 cents per pound paid by handlers; and (6) increase the assessment paid by importers from 1 cent per pound to 1.5 cents per pound on imported honey and honey products.

The following proposed amendments to the Order will become effective after the referendum, regardless of the outcome: (1) Change the two importer-exporter positions on the Board to two importer positions; (2) eliminate the public member position; (3) revise

nomination and eligibility requirements for handlers, importers, and representatives of cooperatives to serve on the Board; (4) require that at least 50 percent of the Board members be honey producers; (5) allow the Board to develop a voluntary quality assurance program with enforcement by USDA; (6) eliminate the requirement for small companies to file for an exemption under the program; and (7) require producers to maintain records. In addition, revised and new definitions for certain terms would be added and obsolete language would be removed from the Order.

There were several additional amendments to the Act in 1998 that do not require amendment of the Order. One of these adds a two-year statute of limitations for persons filing petitions under section 4609 of the Act. In addition, the Act was amended to provide that each producer-packer and importer who votes in referenda will have one vote as a handler and one vote as a producer or importer, assuming that the producer-packer or importer would owe assessments as a handler in addition to owing assessments as a producer or importer, if the votable amendments are approved in the referendum. Further, the Act was amended to provide that the votable amendments will become effective if (1) the amendments are approved or favored by a majority of the producers, producer-packers, importers, and handlers voting in the referendum and (2) that majority produced, imported, and handled 50 percent or more of the pounds of honey and honey products produced, imported, and handled during the representative period by the voters in the referendum. The amended Act also provides that no individual provision of the amended Order shall be subject to a separate vote in the referendum.

If the votable amendments are approved, the same voting criteria for passage will apply in all subsequent referenda. If the votable amendments are not approved, handler approval will not be necessary in future referenda.

List of Subjects in 7 CFR Part 1240

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Honey promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 1240 be amended as follows:

PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION

1. Revise the authority citation for Part 1240 to read as follows:

Authority: 7 U.S.C. 4601–4613; 7 U.S.C. 7401.

2. Revise the heading for 7 CFR Part 1240 to read as set forth above.

3. Add a heading for a new subpart A, consisting of §§ 1240.1 through 1240.67, to read as follows:

Subpart A—Honey Research, Promotion, and Consumer Information Order

§ 1240.43 [Removed]

4. Remove § 1240.43

5.–6. Redesignate §§ 1240.1 through 1240.22 and 1240.44 as follows:

§ 1240.1 through 1240.22 and 1240.44 [Redesignated]

Old section	New section
1240.1	1240.27
1240.2	1240.1
1240.3	1240.19
1240.4	1240.11
1240.5	1240.13
1240.6	1240.21
1240.7	1240.8
1240.8	1240.9
1240.9	1240.22
1240.10	1240.14
1240.11	1240.6
1240.12	1240.23
1240.13	1240.26
1240.14	1240.4
1240.15	1240.16
1240.16	1240.3
1240.17	1240.29
1240.18	1240.2
1240.19	1240.28
1240.20	1240.7
1240.21	1240.20
1240.22	1240.18
1240.44	1240.43

7. Revise newly designated § 1240.2 to read as follows:

§ 1240.2 Board.

Board or National Honey Board means Honey Board, the administrative body established pursuant to § 1240.30.

8. Revise newly designated § 1240.3 to read as follows:

§ 1240.3 Committee.

Committee means the National Honey Nominations Committee established pursuant to § 1240.32.

9. Add a new § 1240.5 to read as follows:

§ 1240.5 Department.

Department means the United States Department of Agriculture.

10. Revise newly designated § 1240.8 to read as follows:

§ 1240.8 Handle.

Handle means to process, package, sell, transport, purchase or in any other way place honey or honey products, or cause them to be placed, in the current of commerce. This term shall include selling unprocessed honey that will be consumed without further processing or packaging. This term shall not include the transportation of unprocessed honey by a producer to a handler or transportation by a commercial carrier of honey, whether processed or unprocessed, for the account of the handler or producer. This term shall not include the purchase of honey or a honey product by a consumer or other end-user of the honey or honey product.

11. Add a new § 1240.10 to read as follows:

§ 1240.10 Handler-importer

Handler-importer means a person who handles honey or honey products of domestic origin and who also, during any three of the preceding five years, was an importer of record or at least 40,000 pounds of honey.

12. Revise newly designated § 1240.11 to read as follows:

§ 1240.11 Honey.

Honey means the nectar and saccharine exudations of plants which are gathered, modified, and stored in the comb by honey bees, including comb honey.

13. Add a new § 1240.12 to read as follows:

§ 1240.12 Honey production.

Honey production means all beekeeping operations related to managing honey bee colonies to produce honey, harvesting honey from the colonies, extracting honey from the honeycombs, and preparing honey for sale and further processing.

14. Revise newly designated § 1240.14 to read as follows:

§ 1240.14 Importer.

Importer means any person who imports honey or honey products into the United States as principal or as an agent, broker, or consignee for any person who produces honey or honey products outside of the United States for sale in the United States, and who is listed in the import records as the importer of record for such honey or honey products.

15. Add a new § 1240.15 to read as follows:

§ 1240.15 Industry information.

Industry information means information or a program that will lead to the development of new domestic and foreign markets, new marketing strategies, or increased efficiency for the honey industry, or an activity to enhance the image of honey and honey products and of the honey industry.

16. Add a new § 1240.17 to read as follows:

§ 1240.17 National honey marketing cooperative.

National honey marketing cooperative means a cooperative that markets its products in at least two of the following four regions of the United States, as determined by the Secretary:

(a) The Atlantic Coast, including the District of Columbia and the Commonwealth of Puerto Rico;

(b) The Mideast;

(c) The Midwest; and

(d) The Pacific, including the states of Alaska and Hawaii.

17. Revise newly designated § 1240.20 to read as follows:

§ 1240.20 Plans and projects.

Plans and projects means those research, promotion, industry information, and consumer education plans, studies, or projects established pursuant to §§ 1240.38 and 1240.39.

18. Add a new § 1240.24 to read as follows:

§ 1240.24 Qualified national organization representing handler interests.

Qualified national organization representing handler interests means an organization that the Secretary certifies as being eligible to recommend nominations to the Committee for handler, handler-importer, alternate handler, and alternate handler-importer members of the Board under § 1240.32.

19. Add a new § 1240.25 to read as follows:

§ 1240.25 Qualified national organization representing importer interests.

Qualified national organization representing importer interests means an organization that the Secretary certifies as being eligible to recommend nominations to the Committee for importer, handler-importer, alternate importer, and alternate handler-importer members of the Board under § 1240.32.

20. Revise newly designated § 1240.26 to read as follows:

§ 1240.26 Research.

Research means any type of systematic study or investigation, including studies testing the effectiveness of market development

and promotion efforts, and/or the evaluation of any study or investigation designed to advance the image, desirability, usage, marketability, production, or quality of honey or honey products. Such term shall also include studies on bees to advance the cost effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects of beekeeping, honey production, and honey bees.

21. Revise § 1240.30 to read as follows:

§ 1240.30 Establishment and membership.

A Honey Board (elsewhere in this part called the Board) is established to administer the terms and provisions of this part. The Board shall consist of fourteen (14) members, each of whom shall have an alternate. Seven members and seven alternates shall be honey producers; two members and two alternates shall be honey handlers; two members and two alternates shall be honey importers; two members and two alternates shall be handlers of honey who are also importers; and one member and one alternate shall be an officer, director, or employee of a national honey marketing cooperative. The Board shall be appointed by the Secretary from nominations submitted by the Committee, pursuant to § 1240.32. Notwithstanding any other provision of this part, at least 50 percent of the members of the Board shall be honey producers.

22. Revise § 1240.31 to read as follows:

§ 1240.31 Term of office.

The members of the Board and their alternates shall serve for terms of three years, except that terms may be staggered periodically as recommended by the Board and as determined by the Secretary or as determined by the Secretary alone. No member or alternate shall serve more than two consecutive three-year terms. The term of office shall begin on April 1. Each Board member and alternate member shall continue to serve until the member or alternate's successor meets all qualifications and is appointed by the Secretary.

23. Amend § 1240.32 as follows:

- a. By revising paragraphs (a)(1) and (a)(3), and (b)(1) and (b)(2) respectively;
- b. Removing paragraph (b)(6);
- c. Redesignating paragraphs (b)(7) and (b)(8) as (b)(6) and (b)(7) respectively;
- d. Revising newly designated paragraphs (b)(6) and (b)(7); and
- e. Adding paragraphs (b)(8), (b)(9), (b)(10), (b)(11), (b)(12), and (b)(13).

The revisions and additions to § 1240.32 read as follows:

§ 1240.32 Nominations.

* * * * *

(a) * * *

(1) There is established a National Honey Nominations Committee, which shall consist of not more than one member from each State, appointed by the Secretary from nominations submitted by each State beekeeper association. Wherever there is more than one eligible association within a State, the Secretary shall designate the association most representative of the honey producers, handlers, and importers not exempt under § 1240.42 (a) and (b) to make nominations for that State.

* * * * *

(3) Members of the Committee shall serve for three-year terms, except that the term of appointments to the Committee may be staggered periodically, as determined by the Secretary. The term of office shall begin on July 1.

* * * * *

(b) * * *

(1) The Committee shall nominate the members and alternate members of the Board and submit such nominations promptly to the Secretary for approval.

(2) The Committee shall meet annually to make such nominations, or at the determination of the Chairperson, the Committee may conduct its business by mail ballot in lieu of an annual meeting.

* * * * *

(6) In nominating producer members to the Board, no producer-packer who, during any three of the preceding five years, purchased for resale more honey than the producer-packer produced shall be eligible for nomination or appointment to the Board as a producer or as an alternate to a producer.

(7) In nominating importer members to the Board, no importer who, during any three of the preceding five years, did not receive at least 75 percent of the gross income generated by the sale of honey and honey products from the sale of imported honey and honey products shall be eligible for nomination or appointment to the Board as an importer or as an alternate to an importer.

(8) In nominating handler-importers to the Board, no handler who, during any three of the preceding five years, was not an importer of record of at least 40,000 pounds of honey shall be eligible for nomination or appointment to the Board as a handler-importer or as an alternate to a handler-importer.

(9) Six months before the new Board term begins, the Committee shall submit to the Secretary nominations for positions on the Board. The number of

nominations will directly correspond to the number of producer, handler, importer, handler-importer, and cooperative member positions due to become vacant. Selection of nominees by the Committee will be pursuant to the following:

(i) Nominations for producer members and alternate producer members will be from one of the seven regions established by the Secretary in which a vacancy will occur;

(ii) Nominations for handler members and alternate handler members will be based on recommendations made by qualified national organizations representing handler interests, or, if the Secretary determines that there is not a qualified national organization representing handler interests, by individual handlers who have paid assessments to the Board on honey or honey products handled;

(iii) Nominations for importer members and alternate importer members will be based on recommendations made by qualified national organizations representing importer interests, or, if the Secretary determines that there is not a qualified national organization representing importer interests, by individual importers who have paid assessments to the Board on imported honey or honey products;

(iv) Nominations for handler members and alternate handler members who are also importers (i.e., handler-importers) will be based on recommendations made by qualified national organizations representing importer interests or qualified national organizations representing handler interests: *Provided*, That, if the Secretary determines that there is not a qualified national organization representing handler or importer interests, then the Committee shall nominate members and alternate members from individual handlers or importers who have paid assessments to the Board on imported honey or honey products; and

(v) Nominations for a member and alternate member who are officers, directors, or employees of national honey marketing cooperatives will be based on recommendations made by qualified national honey marketing cooperatives.

(10) Qualified national organization representing handler interests. To be certified by the Secretary as a qualified national organization representing handler interests, an association or organization must meet the following criteria, as evidenced in a factual report submitted by the association or organization to the Secretary:

(i) The organization's membership is comprised primarily of honey handlers;
(ii) The organization represents a substantial number of handlers who handle a substantial volume of honey in at least 20 states;

(iii) The organization has a history of stability and permanency;
(iv) A primary or overriding purpose of the organization is to promote the economic welfare of honey handlers;
(v) A portion of the operating funds of the organization are derived from handlers; and
(vi) The organization demonstrates the ability and willingness to further the purposes of the Act.

(11) Qualified national organization representing importer interests. To be certified as a qualified national organization representing importer interests, an association or organization must meet the following criteria, as evidenced in a factual report submitted by the association or organization to the Secretary:

(i) The organization's total paid membership is comprised of a significant number of importers or the organization's total paid membership represents at least a majority of the volume of honey imported into the United States;

(ii) The organization has a history of stability and permanency;

(iii) A primary or overriding purpose of the organization is to promote the economic welfare of honey importers;

(iv) Substantial geographic territory is covered by the active membership of the organization;

(v) A portion of the operating funds of the organization are derived from importers; and

(vi) The organization demonstrates the ability and willingness to further the purposes of the Act.

(12) As a condition of certification by the Secretary as a qualified national organization representing handler or importer interests, an organization shall agree to:

(i) Notify handlers and importers who are not members of the organization of Board nomination opportunities for which the organization is certified to make recommendations to the Committee; and

(ii) Consider the nomination of handlers and importers who are not members when making the nominations of the organization to the Committee, if nonmembers indicate an interest in serving on the Board.

(13) A certification determination by the Secretary of a qualified organization representing handler or importer interests shall be final.

24. Add a new § 1240.33 to read as follows:

§ 1240.33. Board reconstitution.

(a) Every five years, the Board shall review the geographic distribution of the quantities of domestically produced honey assessed under this subpart and the changes in the annual average percentage of assessments owed by importers under this subpart relative to assessments owed by producers and handlers of domestic honey, including whether any changes in assessments owed on imported quantities are owed by importers or handler-importers. The Board shall conduct the initial review required by this paragraph prior to the initial continuance referendum conducted pursuant to the Act.

(b)(1) If warranted as a result of this review, the Board shall recommend for the Secretary's approval:

(i) Changes in the regional representation of honey producers;

(ii) The reallocation of handler-importer member positions as handler member positions;

(iii) The reallocation of importer member positions as handler-importer positions;

(iv) The reallocation of handler-importer member positions as importer member positions; and/or

(v) The addition of Board members.

(2) If such allocations are necessary to reflect changes in the proportion of domestic and imported honey assessed under this subpart or the source of assessments on imported honey or honey products, the Board may not recommend a reallocation or addition of members pursuant to paragraphs (b)(1), (ii), (iii), (iv), and (v) of this section unless:

(i) The proportion of assessments owed by handler-importers compared with the proportion of assessments owed by importers changed by more than 6 percent from the base period proportion determined in accordance with paragraph (d) of this section; or

(ii) The proportion of assessments owed by importers compared with the proportion of assessments owed on domestic honey by producers and handlers changed by more than 6 percent from the base period proportion determined in accordance with paragraph (d) of this section.

(c) Except as provided in paragraph (d) of this section, recommendations made under paragraph (b) of this section shall be based on:

(1) The 5-year average annual assessments, excluding the 2 years containing the highest and lowest disparity between the proportion of assessments owed from imported and domestic honey or honey products, determined pursuant to the review that

is conducted under paragraph (a) of this section; and

(2) Whether any change in the average annual assessments is from the assessments owed by importers or the assessments owed by handler-importers.

(d) The base period proportions for determining the magnitude of change under paragraph (c) of this section shall be the proportions determined during the prior review conducted under this section. In the case of the initial review, the base period proportions shall be the proportions determined by the Board for fiscal year 1996.

(e) Notwithstanding any other provision of this section, at least 50 percent of the members of the Board shall be honey producers.

(f) Any such reallocation or addition of members shall be made at least six months prior to the date on which terms of office of the Board begin each year and shall become effective at least 30 days prior to such date.

25. Amend § 1240.34 by revising paragraph (a) to read as follows:

§ 1240.34 Vacancies.

(a) In the event any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant: *Provided*, That if as a result of Board reconstitution pursuant to § 1240.33, a producer member or alternate is no longer from the region from which such person was appointed, or if a member, whose position is based on their status as a handler, importer, or handler-importer is subject to reallocation by the Board, the affected member and/or alternate may serve out the term for which such person was appointed.

* * * * *

26. Amend § 1240.35 by revising paragraph (a) to read as follows:

§ 1240.35 Procedure.

(a) A majority of members, of which at least 50 percent are producers, including alternates acting in place of members of the Board, shall constitute a quorum: *Provided*, That such alternates shall serve only whenever the member is absent from a meeting or is disqualified. Any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

* * * * *

27. Revise § 1240.36 to read as follows:

§ 1240.36 Attendance.

Members of the Board and the members of any special panels shall be reimbursed for reasonable out-of-pocket expenses incurred when performing Board business. The Board shall have the authority to request the attendance of alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members.

28. Amend § 1240.38 by revising paragraphs (c), (d), (e), (g), (k), (l), and (m) to read as follows:

§ 1240.38 Duties.

* * * * *

(c) To prepare and submit to the Secretary for approval 60 days in advance of the beginning of a fiscal period, a budget of its anticipated expenses in the administration of this part including the probable costs of all programs and plans and to recommend a rate of assessment with respect thereto;

(d) To investigate violations of this part and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of this part;

(e) To develop programs and plans and to enter into contracts or agreements with the approval of the Secretary for the development and carrying out of programs and plans of research, promotion, advertising, consumer education, or industry information and the payment of the costs thereof with funds collected pursuant to this part;

* * * * *

(g) To periodically prepare and make public and to make available to producers, handlers, producer-packers, and importers, reports of its activities carried out and, at least once each fiscal period, to make public an accounting of funds received and expended;

* * * * *

(k) To notify honey producers, producer-packers, handlers, handler-importers, and importers of all Board meetings through press releases or other means.

* * * * *

(l) To appoint and convene, from time to time, working committees which may include producers, handlers, producer-packers, importers, exporters, members of wholesale or retail outlets for honey, or other members of the public to assist in the development of research, promotion, advertising, consumer education, and industry information programs for honey; and

(m) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the

development and execution of plans or activities to effectuate the declared purpose of the Act.

29. Revise the heading preceding § 1240.39 to read as follows:

Research, Promotion, Consumer Education, and Industry Information

30. Revise § 1240.39 to read as follows:

§ 1240.39 Research, promotion, consumer education, and industry information.

(a) *Scope of activities.* The Board shall develop and submit to the Secretary for approval any plans, programs, or projects authorized in this section. Such plans, programs, and projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate plans, programs, or projects for consumer education, industry information, advertising, and promotion of honey and honey products designed to strengthen the position of the honey industry in the marketplace and to maintain, develop, and expand markets for honey and honey products;

(2) The establishment and conduct of marketing research and development plans to the end that the acquisition of knowledge pertaining to honey and honey products or their consumption and use may be encouraged or expanded, or to the end that the marketing and utilization of honey and honey products may be encouraged, expanded, improved, or made more efficient: *Provided*, That supply management programs or other programs that would otherwise limit the right of the individual honey producer to produce honey shall not be conducted under, or as a part of, this subpart;

(3) The development and expansion of honey and honey product sales in foreign markets;

(4) A prohibition on advertising or other promotion programs that make any false or unwarranted claims on behalf of honey or its products or false or unwarranted statements with respect to the attributes or use of any competing product;

(5) The sponsorship of research designed to advance the cost-effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects of beekeeping, honey production, and honey bees;

(6) The conduct of activities which may lead to the development of new markets or marketing strategies for honey or honey products. In addition, the Board may conduct activities designed to increase the efficiency of

the honey industry or activities to enhance the image of honey and honey products and the honey industry;

(7) Activities and procedures for monitoring the purity of honey and honey products being sold for domestic consumption, or for export from the United States, including programs or activities for identification of adulterated honey;

(8) Periodic evaluation by the Board of each plan, program, or project authorized under this part to insure that each plan, program, or project contributes to an effective and coordinated program of research, promotion, consumer education, and industry information and submit such evaluation to the Secretary. If the Board or the Secretary finds that a plan, program, or project does not further the purposes of the Act, then the Board shall terminate such plan, program, or project; and

(9) The Board to enter into contracts or make agreements for the development and carrying out of research, promotion, consumer education, and industry information programs, and pay for the costs of such contracts or agreements with funds received by the Board.

(b) *Independent evaluation.* In addition to any evaluation that may be carried out pursuant to paragraph (a)(8) of this section, the Board shall, not less often than every five years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of this subpart and other plans, programs, and projects conducted by the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under paragraph (b) of this section.

31. Amend § 1240.40 by revising paragraphs (a) and (b), redesignating paragraph (c) as paragraph (d), and adding a new paragraph (c) to read as follows:

§ 1240.40 Budget and expenses.

(a) Sixty days in advance of the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including expenses of the Committee and probable costs of research, promotion, consumer education, and industry information.

(b) The Board is authorized to incur expenses for: research, promotion, consumer education, and industry information; such other expenses for the administration, maintenance, and

functioning of the Board and the Committee as may be authorized by the Secretary; any operating reserve established pursuant to § 1240.43; and those administrative costs incurred by the Department specified in paragraph (d) of this section. The funds to cover such expenses shall be paid from assessments collected pursuant to § 1240.41, donations from any person not subject to assessments under this subpart, and other funds available to the Board including those collected pursuant to § 1240.67 and subject to the limitations contained in that section.

(c) The Board shall reserve at least 8 percent of all assessments collected during a year for expenditure on approved research projects designed to advance the cost-effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects of beekeeping, honey production, and honey bees. If any of the funds reserved under this paragraph are not allocated to approved research projects in a year, the remaining reserved funds shall be carried forward for allocation and expenditure in subsequent years to be used on projects described in this paragraph.

* * * * *

32. Revise § 1240.41 to read as follows:

§ 1240.41 Assessments.

(a) *Domestic honey and honey products.* (1) The assessment rate to producers and producer-packers on honey produced by them in the U.S. and handled shall be \$0.0075 per pound of honey produced.

(2) The assessment rate to handlers, including producer-packers in their capacity as handlers, on U.S. produced honey shall be \$0.0075 per pound of honey handled.

(b) *Imported honey and honey products.* The assessment rate on honey or honey products imported into the United States shall be \$0.015 per pound of honey or honey products imported, which equals the combined rate at which domestic honey produced in the U.S. and handled is assessed. Of this \$0.015 total, \$0.0075 per pound represents the assessment due from the importer and \$0.0075 represents the assessment due from the handler and paid by the importer on behalf of the handler. The importer of imported honey and honey products shall pay the assessment of \$0.015 per pound to the Board through the U.S. Customs Service at the time of entry of such honey and honey products into the United States. Should the U.S. Customs Service fail to collect an assessment from an importer,

the importer shall be responsible for the payment of the assessment to the Board.

(c) *General.* (1) Except as provided in § 1240.42 and in paragraphs (b), (d), and (k) of this section, the first handler shall be responsible for the collection of such assessment from the producer and from the handler and payment thereof to the Board. The first handler shall maintain separate records for each producer's honey handled, including honey produced by said handler.

(2) Producer-packers shall pay to the Board the assessment on all honey or honey products for which they act as first handler, in addition to the assessment owed on honey they produce.

(3) Should a first handler fail to collect an assessment from a producer, the producer shall be responsible for the payment of the assessment to the Board.

(4) Assessments shall be paid to the Board at such time and in such manner as the Board, with the Secretary's approval, directs pursuant to this part. Such regulations may provide for different handler, importer, producer, or producer-packer payment schedules so as to recognize differences in marketing or purchasing practices and procedures.

(d) *Late Payment.* (1) There shall be a late-payment charge imposed on any handler, importer, producer, or producer-packer who fails to remit to the Board the total amount for which any such handler, importer, producer, or producer-packer is liable on or before the payment due date established by the Board under paragraph (f) of this section. The amount of the late-payment charge shall be set by the Board subject to approval by the Secretary.

(2) There shall also be imposed on any handler, importer, producer, or producer-packer subject to a late-payment charge, an additional charge in the form of interest on the outstanding portion of any amount for which the handler, importer, producer, or producer-packer is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

(3) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(e) *Honey under loan.* Whenever a loan is made on honey under an USDA loan program, the Secretary shall provide that the assessment be deducted from the proceeds of the loan or the loan deficiency payment, if applicable, and that the amount of such assessment shall be forwarded to the Board, except that the assessment shall not be deducted by the Secretary in the case of a honey marketing cooperative approved by the USDA Commodity

Credit Corporation that deducts the assessment from its member producers. As soon as practicable after the assessment is deducted from the loan funds or loan deficiency payment, the Secretary shall provide the producer with proof of payment of the assessment.

(f) *Advance payment.* The Board is authorized to accept advance payment of assessments by handlers, importers, or producer-packers that shall be credited toward any amount for which the handlers, importers or producer-packers may become liable. The Board is not obligated to pay interest on any advance payment.

33. Amend § 1240.42 as follows:
a. By revising paragraph (a);
b. Removing paragraphs (c) and (f);
c. Redesignating paragraphs (d) and (e) as (c) and (d), respectively; and
d. Revising newly designated paragraphs (c) and (d).
The revisions to § 1240.42 read as follows:

§ 1240.42 Exemption from assessment.

(a) A producer who produces less than 6,000 pounds of honey per year, a producer-packer who produces and handles less than 6,000 pounds of honey or honey products per year, an importer who imports less than 6,000 pounds of honey or honey products per year, or a handler who handles less than 6,000 pounds of honey or honey products per year shall be exempt from assessment provided such honey or honey products are distributed directly through local retail outlets such as roadside stands, farmers markets, groceries, or other outlets as otherwise determined by the Secretary during such year.

* * * * *

(c) If, after a person has been exempt from paying assessments for any year under this section, and such person no longer meets the requirements of this section for an exemption, such person shall file a report with the Board in the form and manner prescribed by the Board and pay an assessment on or before March 15 of the subsequent year on all honey or honey products produced, handled, or imported by such person during the year for which the person claimed the exemption.

(d) The Board may recommend to the Secretary that honey exported from the United States be exempted from the provisions of this subpart and include procedures for the refund of assessments on such honey and such safeguards as may be necessary to prevent improper use of this exemption.

34. Add a new § 1240.44 to read as follows:

§ 1240.44 Inspection and monitoring system.

(a) The Board is authorized to develop and recommend to the Secretary, and the Secretary shall have the authority to approve or disapprove, a system or program for monitoring the purity of honey and honey products being sold for domestic consumption in, or for export from, the United States. Such system or program may include inspection and testing procedures to monitor the purity of honey or to detect adulterated honey.

(b) The Board may recommend and the Secretary may issue rules and regulations as are necessary to implement such system or program as authorized by the Act. Such system or program would require that research be conducted so that fair and equitable test parameters are established for the monitoring and inspection of both domestic and imported honey.

35. Add a new § 1240.45 to read as follows:

§ 1240.45 Voluntary quality assurance program.

(a) The Board is authorized to develop and carry out a voluntary quality assurance program concerning purity standards for honey and honey products. The Secretary shall have the authority to approve or disapprove such program.

(b) The program may include the following components:

(1) The establishment of an official Board seal of approval to be displayed on honey and honey products which meet such standards of purity as are established under the program;

(2) Actions to encourage producers, handlers, and importers to participate in the program;

(3) Actions to encourage consumers to purchase honey and honey products bearing the official seal of approval; and

(4) Periodic inspections by the Secretary, or other parties approved by the Secretary, of honey and honey products of persons who participate in the program.

(c) To be eligible to display the official seal of approval under paragraph (b)(1) of this section on a honey or honey product, a producer, handler, or importer shall participate in the voluntary program described in paragraph (a) of this section.

(d) Any program and related rules and regulations for establishing and carrying out a voluntary quality assurance program may be in addition to or independent of any program, rule, or regulation involving an inspection and monitoring system under § 1240.44.

36. Add a new § 1240.46 to read as follows:

§ 1240.46 Minimum purity standards.

The Board is authorized to develop and recommend to the Secretary and the Secretary shall have the authority to approve or disapprove the establishment of minimum purity standards and related rules and regulations for honey and honey products designed to maintain a positive and wholesome marketing image for honey and honey products. Any such standards would require that research be conducted so that fair and equitable test parameters are established for determining the purity of both domestic and imported honey.

37. Revise § 1240.50 to read as follows:

§ 1240.50 Reports.

Each handler, importer, producer, or producer-packer subject to this part shall be required to report to the employees of the Board, at such time and in such manner as it may prescribe, such information as may be necessary for the Board to perform its duties. Such reports shall include, but shall not be limited to the following:

(a) For producers or producer-packers: the quantity of honey produced and the total number of bee colonies maintained.

(b) For handlers or producer-packers: the total quantity of honey acquired during the reporting period; the total quantity of honey and honey products handled during such period; the amount of honey acquired from each producer, giving the name and address of each producer; the assessments collected during the reporting period; the quantity of honey processed for sale from a producer-packer's own production; and a record of each transaction for honey on which assessments had already been paid, including a statement from the seller that the assessment had been paid.

(c) For importers: The total quantity of honey and honey products imported during the reporting period and a record of each importation of honey or honey products during such period, giving the quantity, date, country of origin, and port of entry.

(d) For persons who have an exemption from assessments under § 1240.42(a) and (b), such information as deemed necessary by the Board, and approved by the Secretary, concerning the exemption including disposition of exempted honey.

38. Revise § 1240.51 to read as follows:

§ 1240.51 Books and records.

Each handler, importer, producer, producer-packer, or any person who is

exempt from assessments under this subpart shall maintain and during normal business hours make available for inspection by employees or agents of the Board or the Secretary, such books and records as are necessary to carry out the provisions of this part, including such records as are necessary to verify any required reports. A member or alternate member of the Board is prohibited from conducting such inspections. Such books and records shall be maintained for two years beyond the first period of their applicability.

39. Revise § 1240.52 to read as follows:

§ 1240.52 Confidential treatment.

All information obtained from the books, records, or reports required to be maintained under §§ 1240.50 and 1240.51 shall be kept confidential by all employees and agents of the Board and all officers and employees of the Department and shall not be disclosed to the public. Only such information as the Secretary deems relevant shall be disclosed to the public and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart: Except that nothing in this subpart shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of handlers or importers subject to this subpart, if such statements do not identify the information furnished by any person;

(b) The publication by direction of the Secretary, of the name of any person convicted of violating this subpart, together with a statement of the particular provisions of this subpart violated by such person.

40. Revise § 1240.61 to read as follows:

§ 1240.61 Right of the Secretary.

All fiscal matters, programs or plans, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

41. Amend § 1240.62 as follows:

- a. By revising paragraph (b);
- b. Removing paragraph (c);
- c. Redesignating paragraph (d) as (c); and
- d. Revising newly designated paragraph (c).

The revisions to § 1240.62 read as follows:

§ 1240.62 Suspension or termination.

* * * * *

(b) Except as otherwise provided in paragraph (c) of this section, five (5) years from the date the Secretary issues an Order authorizing the collection of assessments on honey under provisions of this subpart, and every five (5) years thereafter, the Secretary shall conduct a referendum to determine if honey producers, handlers, producer-packers, and importers subject to assessment favor the termination or suspension of this subpart.

(c) The Secretary shall hold a referendum on the request of the Board,

or when petitioned by 10 percent or more of the honey producers, handlers, producer-packers, and importers subject to assessment under this subpart to determine if the honey producers, handlers, producer-packers, and importers favor termination or suspension of this subpart. A referendum under this paragraph may not be held more than once every two (2) years. If the Secretary determines, through a referendum conducted pursuant to this paragraph, that

continuation of this subpart is approved, any referendum otherwise required to be conducted under paragraph (b) of this section shall not be held less than five (5) years after the date the referendum was conducted under this paragraph.

Dated: July 28, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

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BILLING CODE 3410-02-U

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. This list is also available online at <http://www.nara.gov/fedreg>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.access.gpo.gov/nara/index.html>. Some laws may not yet be available.

H.R. 1791/P.L. 106-254

Federal Law Enforcement Animal Protection Act of 2000 (Aug. 2, 2000; 114 Stat. 638)

H.R. 4249/P.L. 106-255

Cross-Border Cooperation and Environmental Safety in Northern Europe Act of 2000 (Aug. 2, 2000; 114 Stat. 639)

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-038-00001-3)	6.50	Apr. 1, 2000
3 (1997 Compilation and Parts 100 and 101)	(869-042-00002-1)	22.00	Jan. 1, 2000
4	(869-042-00003-0)	8.50	Jan. 1, 2000
5 Parts:			
1-699	(869-042-00004-8)	43.00	Jan. 1, 2000
700-1199	(869-042-00005-6)	31.00	Jan. 1, 2000
1200-End, 6 (6 Reserved)	(869-042-00006-4)	48.00	Jan. 1, 2000
7 Parts:			
1-26	(869-042-00007-2)	28.00	Jan. 1, 2000
27-52	(869-042-00008-1)	35.00	Jan. 1, 2000
53-209	(869-042-00009-9)	22.00	Jan. 1, 2000
210-299	(869-042-00010-2)	54.00	Jan. 1, 2000
300-399	(869-042-00011-1)	29.00	Jan. 1, 2000
400-699	(869-042-00012-9)	41.00	Jan. 1, 2000
700-899	(869-042-00013-7)	37.00	Jan. 1, 2000
900-999	(869-042-00014-5)	46.00	Jan. 1, 2000
1000-1199	(869-042-00015-3)	18.00	Jan. 1, 2000
1200-1599	(869-042-00016-1)	44.00	Jan. 1, 2000
1600-1899	(869-042-00017-0)	61.00	Jan. 1, 2000
1900-1939	(869-042-00018-8)	21.00	Jan. 1, 2000
1940-1949	(869-042-00019-6)	37.00	Jan. 1, 2000
1950-1999	(869-042-00020-0)	38.00	Jan. 1, 2000
2000-End	(869-042-00021-8)	31.00	Jan. 1, 2000
8	(869-042-00022-6)	41.00	Jan. 1, 2000
9 Parts:			
1-199	(869-042-00023-4)	46.00	Jan. 1, 2000
200-End	(869-042-00024-2)	44.00	Jan. 1, 2000
10 Parts:			
1-50	(869-042-00025-1)	46.00	Jan. 1, 2000
51-199	(869-042-00026-9)	38.00	Jan. 1, 2000
200-499	(869-042-00027-7)	38.00	Jan. 1, 2000
500-End	(869-042-00028-5)	48.00	Jan. 1, 2000
11	(869-042-00029-3)	23.00	Jan. 1, 2000
12 Parts:			
1-199	(869-042-00030-7)	18.00	Jan. 1, 2000
200-219	(869-042-00031-5)	22.00	Jan. 1, 2000
220-299	(869-042-00032-3)	45.00	Jan. 1, 2000
300-499	(869-042-00033-1)	29.00	Jan. 1, 2000
500-599	(869-042-00034-0)	26.00	Jan. 1, 2000
600-End	(869-042-00035-8)	53.00	Jan. 1, 2000
13	(869-042-00036-6)	35.00	Jan. 1, 2000

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14 Parts:			
1-59	(869-042-00037-4)	58.00	Jan. 1, 2000
60-139	(869-042-00038-2)	46.00	Jan. 1, 2000
140-199	(869-038-00039-1)	17.00	Jan. 1, 2000
200-1199	(869-042-00040-4)	29.00	Jan. 1, 2000
1200-End	(869-042-00041-2)	25.00	Jan. 1, 2000
15 Parts:			
0-299	(869-042-00042-1)	28.00	Jan. 1, 2000
300-799	(869-042-00043-9)	45.00	Jan. 1, 2000
800-End	(869-042-00044-7)	26.00	Jan. 1, 2000
16 Parts:			
0-999	(869-042-00045-5)	33.00	Jan. 1, 2000
1000-End	(869-042-00046-3)	43.00	Jan. 1, 2000
17 Parts:			
1-199	(869-042-00048-0)	32.00	Apr. 1, 2000
200-239	(869-042-00049-8)	38.00	Apr. 1, 2000
240-End	(869-042-00050-1)	49.00	Apr. 1, 2000
18 Parts:			
1-399	(869-042-00051-0)	54.00	Apr. 1, 2000
400-End	(869-042-00052-8)	15.00	Apr. 1, 2000
19 Parts:			
1-140	(869-042-00053-6)	40.00	Apr. 1, 2000
141-199	(869-042-00054-4)	40.00	Apr. 1, 2000
200-End	(869-042-00055-2)	20.00	Apr. 1, 2000
20 Parts:			
1-399	(869-042-00056-1)	33.00	Apr. 1, 2000
400-499	(869-042-00057-9)	56.00	Apr. 1, 2000
500-End	(869-042-00058-7)	58.00	Apr. 1, 2000
21 Parts:			
1-99	(869-042-00059-5)	26.00	Apr. 1, 2000
100-169	(869-042-00060-9)	30.00	Apr. 1, 2000
170-199	(869-042-00061-7)	29.00	Apr. 1, 2000
200-299	(869-042-00062-5)	13.00	Apr. 1, 2000
300-499	(869-042-00063-3)	20.00	Apr. 1, 2000
500-599	(869-042-00064-1)	31.00	Apr. 1, 2000
600-799	(869-038-00065-2)	9.00	Apr. 1, 1999
800-1299	(869-042-00066-8)	38.00	Apr. 1, 2000
1300-End	(869-042-00067-6)	15.00	Apr. 1, 2000
22 Parts:			
1-299	(869-042-00068-4)	54.00	Apr. 1, 2000
300-End	(869-042-00069-2)	31.00	Apr. 1, 2000
23	(869-042-00070-6)	29.00	Apr. 1, 2000
24 Parts:			
*0-199	(869-042-00071-4)	40.00	Apr. 1, 2000
200-499	(869-042-00072-2)	37.00	Apr. 1, 2000
500-699	(869-042-00073-1)	20.00	Apr. 1, 2000
*700-1699	(869-042-00074-9)	46.00	Apr. 1, 2000
1700-End	(869-042-00075-7)	18.00	Apr. 1, 2000
25	(869-042-00076-5)	52.00	Apr. 1, 2000
26 Parts:			
§§ 1.0-1.60	(869-042-00077-3)	31.00	Apr. 1, 2000
§§ 1.61-1.169	(869-042-00078-1)	56.00	Apr. 1, 2000
§§ 1.170-1.300	(869-042-00079-0)	38.00	Apr. 1, 2000
§§ 1.301-1.400	(869-042-00080-3)	29.00	Apr. 1, 2000
§§ 1.401-1.440	(869-042-00081-1)	47.00	Apr. 1, 2000
§§ 1.441-1.500	(869-042-00082-0)	36.00	Apr. 1, 2000
§§ 1.501-1.640	(869-042-00083-8)	32.00	Apr. 1, 2000
§§ 1.641-1.850	(869-042-00084-6)	41.00	Apr. 1, 2000
§§ 1.851-1.907	(869-042-00085-4)	43.00	Apr. 1, 2000
§§ 1.908-1.1000	(869-042-00086-2)	41.00	Apr. 1, 2000
§§ 1.1001-1.1400	(869-042-00087-1)	45.00	Apr. 1, 2000
§§ 1.1401-End	(869-042-00088-9)	66.00	Apr. 1, 2000
2-29	(869-042-00089-7)	45.00	Apr. 1, 2000
30-39	(869-042-00090-1)	31.00	Apr. 1, 2000
40-49	(869-042-00091-9)	18.00	Apr. 1, 2000
50-299	(869-042-00092-7)	23.00	Apr. 1, 2000
300-499	(869-042-00093-5)	43.00	Apr. 1, 2000
500-599	(869-042-00094-3)	12.00	Apr. 1, 2000
600-End	(869-042-00095-1)	12.00	Apr. 1, 2000
27 Parts:			
1-199	(869-042-00096-0)	59.00	Apr. 1, 2000

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200-End	(869-042-00097-8)	18.00	Apr. 1, 2000	260-265	(869-038-00151-9)	32.00	July 1, 1999
28 Parts:				266-299	(869-038-00152-7)	33.00	July 1, 1999
0-42	(869-038-00098-9)	39.00	July 1, 1999	300-399	(869-038-00153-5)	26.00	July 1, 1999
43-end	(869-038-00099-7)	32.00	July 1, 1999	400-424	(869-038-00154-3)	34.00	July 1, 1999
29 Parts:				425-699	(869-038-00155-1)	44.00	July 1, 1999
0-99	(869-038-00100-4)	28.00	July 1, 1999	700-789	(869-038-00156-0)	42.00	July 1, 1999
100-499	(869-038-00101-2)	13.00	July 1, 1999	790-End	(869-038-00157-8)	23.00	July 1, 1999
500-899	(869-038-00102-1)	40.00	7 July 1, 1999	41 Chapters:			
900-1899	(869-038-00103-9)	21.00	July 1, 1999	1, 1-1 to 1-10		13.00	³ July 1, 1984
1900-1910 (§§ 1900 to 1910.999)	(869-038-00104-7)	46.00	July 1, 1999	1, 1-11 to Appendix, 2 (2 Reserved)		13.00	³ July 1, 1984
1910 (§§ 1910.1000 to end)	(869-038-00105-5)	28.00	July 1, 1999	3-6		14.00	³ July 1, 1984
1911-1925	(869-038-00106-3)	18.00	July 1, 1999	7		6.00	³ July 1, 1984
1926	(869-038-00107-1)	30.00	July 1, 1999	8		4.50	³ July 1, 1984
1927-End	(869-038-00108-0)	43.00	July 1, 1999	9		13.00	³ July 1, 1984
30 Parts:				10-17		9.50	³ July 1, 1984
1-199	(869-038-00109-8)	35.00	July 1, 1999	18, Vol. I, Parts 1-5		13.00	³ July 1, 1984
200-699	(869-038-00110-1)	30.00	July 1, 1999	18, Vol. II, Parts 6-19		13.00	³ July 1, 1984
700-End	(869-038-00111-0)	35.00	July 1, 1999	18, Vol. III, Parts 20-52		13.00	³ July 1, 1984
31 Parts:				19-100		13.00	³ July 1, 1984
0-199	(869-038-00112-8)	21.00	July 1, 1999	1-100	(869-038-00158-6)	14.00	July 1, 1999
200-End	(869-038-00113-6)	48.00	July 1, 1999	101	(869-038-00159-4)	39.00	July 1, 1999
32 Parts:				102-200	(869-038-00160-8)	16.00	July 1, 1999
1-39, Vol. I		15.00	² July 1, 1984	201-End	(869-038-00161-6)	15.00	July 1, 1999
1-39, Vol. II		19.00	² July 1, 1984	42 Parts:			
1-39, Vol. III		18.00	² July 1, 1984	1-399	(869-038-00162-4)	36.00	Oct. 1, 1999
1-190	(869-038-00114-4)	46.00	July 1, 1999	400-429	(869-038-00163-2)	44.00	Oct. 1, 1999
191-399	(869-038-00115-2)	55.00	July 1, 1999	430-End	(869-038-00164-1)	54.00	Oct. 1, 1999
400-629	(869-038-00116-1)	32.00	July 1, 1999	43 Parts:			
630-699	(869-038-00117-9)	23.00	July 1, 1999	1-999	(869-038-00165-9)	32.00	Oct. 1, 1999
700-799	(869-038-00118-7)	27.00	July 1, 1999	1000-end	(869-038-00166-7)	47.00	Oct. 1, 1999
800-End	(869-038-00119-5)	27.00	July 1, 1999	44	(869-038-00167-5)	28.00	Oct. 1, 1999
33 Parts:				45 Parts:			
1-124	(869-038-00120-9)	32.00	July 1, 1999	1-199	(869-038-00168-3)	33.00	Oct. 1, 1999
125-199	(869-038-00121-7)	41.00	July 1, 1999	200-499	(869-038-00169-1)	16.00	Oct. 1, 1999
200-End	(869-038-00122-5)	33.00	July 1, 1999	500-1199	(869-038-00170-5)	30.00	Oct. 1, 1999
34 Parts:				1200-End	(869-038-00171-3)	40.00	Oct. 1, 1999
1-299	(869-038-00123-3)	28.00	July 1, 1999	46 Parts:			
300-399	(869-038-00124-1)	25.00	July 1, 1999	1-40	(869-038-00172-1)	27.00	Oct. 1, 1999
400-End	(869-038-00125-0)	46.00	July 1, 1999	41-69	(869-038-00173-0)	23.00	Oct. 1, 1999
35	(869-038-00126-8)	14.00	⁷ July 1, 1999	70-89	(869-038-00174-8)	8.00	Oct. 1, 1999
36 Parts:				90-139	(869-038-00175-6)	26.00	Oct. 1, 1999
1-199	(869-038-00127-6)	21.00	July 1, 1999	140-155	(869-038-00176-4)	15.00	Oct. 1, 1999
200-299	(869-038-00128-4)	23.00	July 1, 1999	156-165	(869-038-00177-2)	21.00	Oct. 1, 1999
300-End	(869-038-00129-2)	38.00	July 1, 1999	166-199	(869-038-00178-1)	27.00	Oct. 1, 1999
37	(869-038-00130-6)	29.00	July 1, 1999	200-499	(869-038-00179-9)	23.00	Oct. 1, 1999
38 Parts:				500-End	(869-038-00180-2)	15.00	Oct. 1, 1999
0-17	(869-038-00131-4)	37.00	July 1, 1999	47 Parts:			
18-End	(869-038-00132-2)	41.00	July 1, 1999	0-19	(869-038-00181-1)	39.00	Oct. 1, 1999
39	(869-038-00133-1)	24.00	July 1, 1999	20-39	(869-038-00182-9)	26.00	Oct. 1, 1999
40 Parts:				40-69	(869-038-00183-7)	26.00	Oct. 1, 1999
1-49	(869-038-00134-9)	33.00	July 1, 1999	70-79	(869-038-00184-5)	39.00	Oct. 1, 1999
50-51	(869-038-00135-7)	25.00	July 1, 1999	80-End	(869-038-00185-3)	40.00	Oct. 1, 1999
52 (52.01-52.1018)	(869-038-00136-5)	33.00	July 1, 1999	48 Chapters:			
52 (52.1019-End)	(869-038-00137-3)	37.00	July 1, 1999	1 (Parts 1-51)	(869-038-00186-1)	55.00	Oct. 1, 1999
53-59	(869-038-00138-1)	19.00	July 1, 1999	1 (Parts 52-99)	(869-038-00187-0)	30.00	Oct. 1, 1999
60	(869-038-00139-0)	59.00	July 1, 1999	2 (Parts 201-299)	(869-038-00188-8)	36.00	Oct. 1, 1999
61-62	(869-038-00140-3)	19.00	July 1, 1999	3-6	(869-038-00189-6)	27.00	Oct. 1, 1999
63 (63.1-63.1119)	(869-038-00141-1)	58.00	July 1, 1999	7-14	(869-038-00190-0)	35.00	Oct. 1, 1999
63 (63.1200-End)	(869-038-00142-0)	36.00	July 1, 1999	15-28	(869-038-00191-8)	36.00	Oct. 1, 1999
64-71	(869-038-00143-8)	11.00	July 1, 1999	29-End	(869-038-00192-6)	25.00	Oct. 1, 1999
72-80	(869-038-00144-6)	41.00	July 1, 1999	49 Parts:			
81-85	(869-038-00145-4)	33.00	July 1, 1999	1-99	(869-038-00193-4)	34.00	Oct. 1, 1999
86	(869-038-00146-2)	59.00	July 1, 1999	100-185	(869-038-00194-2)	53.00	Oct. 1, 1999
87-135	(869-038-00146-1)	53.00	July 1, 1999	186-199	(869-038-00195-1)	13.00	Oct. 1, 1999
136-149	(869-038-00148-9)	40.00	July 1, 1999	200-399	(869-038-00196-9)	53.00	Oct. 1, 1999
150-189	(869-038-00149-7)	35.00	July 1, 1999	400-999	(869-038-00197-7)	57.00	Oct. 1, 1999
190-259	(869-038-00150-1)	23.00	July 1, 1999	1000-1199	(869-038-00198-5)	17.00	Oct. 1, 1999
				1200-End	(869-038-00199-3)	14.00	Oct. 1, 1999
				50 Parts:			
				1-199	(869-038-00200-1)	43.00	Oct. 1, 1999
				200-599	(869-038-00201-9)	22.00	Oct. 1, 1999

Title	Stock Number	Price	Revision Date
600-End	(869-038-00202-7)	37.00	Oct. 1, 1999
CFR Index and Findings Aids	(869-042-00047-1)	53.00	Jan. 1, 2000
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¹ Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

² The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

³ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

⁴ No amendments to this volume were promulgated during the period January 1, 1999, through January 1, 2000. The CFR volume issued as of January 1, 1999 should be retained.

⁵ No amendments to this volume were promulgated during the period April 1, 1999, through April 1, 2000. The CFR volume issued as of April 1, 1999 should be retained.

⁷ No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.