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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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 00–077–1]

Asian Longhorned Beetle Regulations; Addition to Regulated Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Asian Longhorned Beetle regulations by expanding the quarantined area in the city of New York and in Nassau and Suffolk Counties, NY. As a result of this action, the interstate movement of regulated articles from those areas is restricted. This action is necessary on an emergency basis to prevent the artificial spread of the Asian longhorned beetle to noninfested areas of the United States.

DATES: This interim rule was effective September 6, 2000. We invite you to comment on this docket. We will consider all comments that we receive by November 13, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 00–077–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 00–077–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Staff Officer, Invasive Species and Pest Management Staff, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737–1231; (301) 734–7338.

SUPPLEMENTARY INFORMATION:

Background

The Asian longhorned beetle (ALB) (Anoplophora glabripennis), an insect native to China, Japan, Korea, and the Isle of Hainan, is a destructive pest of hardwood trees. It is known to attack healthy maple, horse chestnut, birch, poplar, willow, elm, and locust trees. It may also attack other species of hardwood trees. In addition, nursery stock, logs, green lumber, firewood, stumps, roots, branches, and debris of a half an inch or more in diameter are subject to infestation. The beetle bores into the heartwood of a host tree, eventually killing it. Immature beetles bore into tree trunks and branches causing heavy sap flow from wounds and sawdust accumulation at tree bases. They feed on, and over-winter in, the interiors of trees. Adult beetles emerge in the spring and summer months from round holes approximately three-eighths of an inch in diameter (about the size of a dime) that they bore through the trunks of trees. After emerging, adult beetles feed for 2 to 3 days and then mate. Adult females then lay eggs in oviposition sites that they make on the branches of trees. A new generation of ALB is produced each year. If this pest moves into the hardwood forests of the United States, the nursery, maple syrup, and forest products industries could experience severe economic losses. In addition, urban and forest ALB infestations will result in environmental damage, aesthetic deterioration, and a reduction in public enjoyment of recreational spaces.

The Asian longhorned beetle regulations (7 CFR 301.51–1 through 301.51–9, referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of ALB to noninfested areas of the United States. Portions of New York City and Nassau and Suffolk Counties in the State of New York and portions of the State of Illinois are already designated as quarantined areas.

Recent surveys conducted by inspectors of State, county, and city agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that infestations of ALB have occurred outside the quarantined areas in New York City and in Nassau and Suffolk Counties, NY. Officials of the U.S. Department of Agriculture and officials of State, county, and city agencies in New York are conducting an intensive survey and eradication program in the infested areas. The State of New York has quarantined the infested areas and is restricting the intrastate movement of regulated articles from the quarantined area to prevent the artificial spread of ALB within the State. However, Federal regulations are necessary to restrict the interstate movement of regulated articles from the quarantined area to prevent the artificial spread of ALB to other States and Canada.

The regulations in § 301.51–3(a) provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which ALB has been found by an inspector, in which the Administrator has reason to believe that ALB is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities where ALB has been found.

Less than an entire State will be quarantined only if (1) the Administrator determines that the State has adopted and is enforcing restrictions on the interstate movement of regulated articles; and (2) the designation of less than an entire State as a quarantined area will be adequate to prevent the artificial spread of ALB.

In accordance with these criteria and the recent ALB findings described above, we are amending § 301.51–3(c) by expanding the quarantined areas in the city of New York and in Nassau and Suffolk Counties, NY. The expanded and new quarantined areas are described in the rule portion of this document.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the ALB from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register.** After the comment period closes, we will publish another document in the **Federal Register.** The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required under Executive Order 12866.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

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

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this on-going program. The environmental assessment concludes that expanding the Federal quarantine for ALB will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

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

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**, by calling the Plant Protection and Quarantine fax service at (301) 734–3560 and requesting document number 0023, or by visiting the following Internet site: *http://www.aphis.usda.gov/ppd/ead/ppqdocs.html.*

Paperwork Reduction Act

This interim rule contains no collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

1. The authority citation for part 301 continues to read as follows:

Authority: Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 166; 7 CFR 2.22, 2.80, and 371.3.

2. In § 301.51–3, paragraph (c), the entry for the State of New York is revised to read as follows:

§ 301.51–3 Quarantined areas.

* * * * *

(c) * * *

New York

New York City. That area in the boroughs of Manhattan, Brooklyn, and Queens in the City of New York that is bounded as follows: Beginning at a point where the Brooklyn Battery Tunnel intersects the Manhattan shoreline of the East River; then north along the shoreline of the East River to Whitehall Street; then north along Whitehall Street to Broadway; then north along Broadway to west 58th Street; then west along west 58th Street to the shoreline of the Hudson River; then north along the shoreline of the Hudson River to Martin Luther King, Jr., Boulevard; then east along Martin Luther King, Jr., Boulevard and across the Triborough Bridge to the west shoreline of Randall's and Ward's Island; then east and south along the shoreline of Randall's and Ward's Island to the Triborough Bridge; then east along the Triborough Bridge to the Queens shoreline; then north and east along the Queens shoreline to the western boundary of LaGuardia Airport; then south and east along the LaGuardia Airport boundary to 94th Street; then south along 94th Street to Junction Boulevard; then south along Junction Boulevard to Queens Boulevard; then east along Queens Boulevard to Yellowstone Boulevard; then south along Yellowstone Boulevard to Woodhaven Boulevard; then south along Woodhaven Boulevard to Atlantic Avenue; then west along Atlantic Avenue to the Eastern Parkway Extension; then south and west along the Eastern Parkway Extension and Eastern Parkway to Grand Army Plaza; then west along the south side of Grand Army Plaza to Union Street; then west along Union Street to Van Brunt Street; then south along Van Brunt Street to Hamilton Avenue and the Brooklyn Battery Tunnel; then north along Hamilton Avenue and the Brooklyn Battery Tunnel to the East River; then north along the Brooklyn Battery Tunnel across the East River to the point of beginning.

That area in the borough of Queens in the City of New York that is bounded as follows: Beginning at a point where the Grand Central Parkway intersects the City of New York and Nassau County line; then west along the Grand Central Parkway to 188th Street; then north along 188th Street to the northern

boundary of the Kissena Corridor; then west along the northern boundary of the Kissena Corridor, Kissena Park, and Kissena Corridor Park to Van Wyck Expressway; then north along the Van Wyck Expresssway to the east shoreline of the Flushing River; then west, north, and east along the Queens shoreline to the City of New York and Nassau County line; then southeast along the City of New York and Nassau County line to the point of beginning.

Nassau and Suffolk Counties. That area in the villages of Amityville, West Amityville, North Amityville, Babylon, West Babylon, Copiague, Lindenhurst, Massapequa, Massapequa Park, and East Massapequa; in the towns of Oyster Bay and Babylon; in the counties of Nassau and Suffolk that is bounded as follows: Beginning at a point where West Main Street intersects the west shoreline of Carlis Creek; then west along West Main Street to Route 109; then north along Route 109 to Arnold Avenue; then northwest along Arnold Avenue to Albin Avenue; then west along Albin Avenue to East John Street; then west along East John Street to Wellwood Avenue; then north along Wellwood Avenue to the Southern State Parkway; then west along the Southern State Parkway to Broadway; then south along Broadway to Hicksville Road; then south along Hicksville Road to Division Avenue; then south along Division Avenue to South Oyster Bay; then east along the shoreline of South Oyster Bay to Carlis Creek; then along the west shoreline of Carlis Creek to the point of beginning.

That area in the villages of Bayshore, East Islip, Islip, and Islip Terrace in the Town of Islip, in the County of Suffolk, that is bounded as follows: Beginning at a point where Route 27A intersects Brentwood Road; then east along Route 27A to the Southern State Parkway Heckscher Spur; then north and west along the Southern State Parkway Heckscher Spur to Carleton Avenue; then north along Carleton Avenue to the southern boundary of the New York Institute of Technology; then west along the southern boundary of the New York Institute of Technology through its intersection with Wilson Boulevard to Pear Street; then west along Pear Street through its intersection with Freeman Avenue to Riddle Street; then west along Riddle Street to Broadway; then south along Broadway to the Southern State Parkway Heckscher Spur; then west along the Southern State Parkway Heckscher Spur to Brentwood Road; then south along Brentwood Road to the point of beginning.

Done in Washington, DC, this 6th day of September 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection, Service.

[FR Doc. 00–23368 Filed 9–11–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 920 and 944

[Docket No. FV00–920–2 FR]

Kiwifruit Grown in California and Imported Kiwifruit; Relaxation of the Minimum Maturity Requirement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule relaxes the current minimum maturity requirements for fresh shipments of kiwifruit grown in California and for kiwifruit imported into the United States. The Kiwifruit Administrative Committee (Committee) which locally administers the marketing order for California kiwifruit unanimously recommended the change for California kiwifruit. The change in the import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937. This action allows handlers and importers to ship kiwifruit which meets the minimum maturity requirement of 6.2 percent soluble solids. This change is expected to reduce handler inspection costs, increase grower returns, and enable handlers and importers to compete more effectively in the marketplace.

EFFECTIVE DATE: September 13, 2000.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; 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 Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, 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.''

This final rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including kiwifruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

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. This action 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.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Under the terms of the order, fresh market shipments of California kiwifruit are required to be inspected and are subject to grade, size, maturity, pack

and container requirements. Current requirements include specifications that such shipments be at least Size 45, grade at least KAC No. 1 quality, and contain a minimum of 6.5 percent soluble solids.

The order authorizes under § 920.52(a)(1) the establishment of minimum maturity requirements. Section 920.302(a)(3) of the rules and regulations outlines the minimum maturity requirements for fresh shipments of California kiwifruit and specifies that kiwifruit shall have a minimum of 6.5 percent soluble solids at the time of inspection.

Maturity is generally determined on the basis of total solids or soluble solids content. Kiwifruit can ripen on or off the vine and typically contains between 5 and 8 percent starch at harvest. This starch hydrolyzes into sugars during ripening. Kiwifruit continues to ripen while stored in refrigerated facilities and may reach 16.2 percent soluble solids when completely ripe.

In the 1980's, the minimum maturity requirements were established at 6.5 percent soluble solids for both the domestic and import regulations. This minimum soluble solids level was established because research showed that the majority of fruit harvested at 6.5 percent soluble solids ripened to a 13.5–14 percent soluble solids level or higher, and stored well. Also, consumer taste tests showed that fruit containing at least 13.5 percent soluble solids were more acceptable than fruit containing lower levels of soluble solids. These regulations benefited growers, handlers, consumers, and importers as improvements were seen in the quality of fruit shipped to the market place, domestic and export sales, and grower returns.

Since that time a number of factors have changed: (1) Research conducted during the 1990's has shown that fruit harvested at 6.2 percent soluble solids and handled properly has the potential to ripen to 12.6 percent soluble solids or higher, (2) recent consumer taste tests have shown that fruit containing at least 12.6 percent soluble solids has a high level of acceptability, and (3) the majority of the kiwifruit producing countries are now utilizing 6.2 percent soluble solids as their guideline for minimum maturity.

The six countries exporting kiwifruit to the United States are New Zealand, Chile, Greece, France, Italy, and Canada. New Zealand has a mandatory maturity standard of 6.2 percent soluble solids. Chile, Greece, France, Italy, and Canada utilize a voluntary 6.2 percent soluble solids guideline for minimum maturity.

The Committee, at its May 2, 2000, meeting, unanimously recommended relaxing the minimum maturity requirements to 6.2 percent soluble solids because of the above-mentioned factors and because this relaxation is expected to reduce handler inspection costs, increase grower returns, and enable handlers and importers to compete more effectively in the marketplace.

Section 8e of the Act provides that when certain domestically produced commodities, including kiwifruit, are regulated under a Federal order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule relaxes the minimum maturity requirement under the domestic handling regulations, a corresponding change to the import regulation must also be considered.

Minimum grade, size, quality, and maturity requirements for kiwifruit imported into the United States are currently in effect under § 944.550 (7 CFR 944.550). The minimum maturity requirement is covered in paragraph (a) of § 944.550. Paragraph (a) of § 944.550 states that the importation into the United States of any kiwifruit is prohibited unless such kiwifruit meets all the requirements of a U.S. No. 1 grade as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340) (Standards), except that the kiwifruit shall be ''not badly misshapen'', and an additional tolerance of 7 percent is provided for ''badly misshapen'' fruit. The Standards define ''Mature'' to mean that the fruit has reached the stage of development which will ensure the proper completion of the ripening process. The Standards further specify that the minimum average soluble solids, unless otherwise specified, shall be not less than 6.5 percent.

The relaxation in the minimum maturity requirement for importers of kiwifruit will also have a beneficial impact. This rule relaxes the minimum maturity requirement for imported kiwifruit from 6.5 percent soluble solids to 6.2 percent soluble solids. The majority of the kiwifruit producing countries now are utilizing a 6.2 percent soluble solids level as their guideline for minimum maturity. Thus, importers will be able to utilize one minimum maturity standard for shipments of kiwifruit.

The metric equivalent of the minimum sizes currently specified is also added to paragraph (a) of § 944.550.

Final Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and 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. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 56 handlers of California kiwifruit who are subject to regulation under the order and about 400 kiwifruit producers in the regulated area. There are approximately 50 importers of kiwifruit. Small agricultural service firms which include kiwifruit handlers and importers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts are less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. Fifty-six handlers and fifty importers have annual receipts of less than $5,000,000, excluding receipts from other sources. Three hundred ninety producers have annual sales less than $500,000, excluding receipts from any other sources. Therefore, a majority of the kiwifruit handlers, importers, and producers may be classified as small entities.

This rule relaxes the minimum maturity requirements specified in § 920.302(a)(3) (7 CFR part 920) of the order's regulations and in § 944.550 (7 CFR 944.550) for imported kiwifruit. These sections, respectively, allow handlers and importers to ship kiwifruit which meets the minimum maturity requirement of 6.5 percent soluble solids. Relaxation of the minimum maturity requirements to 6.2 percent soluble solids is expected to reduce handler inspection costs, increase grower returns, and enable handlers and importers to compete more effectively in the marketplace. Authority for this action is provided in § 920.52 (a)(1) of the order, and section 8e of the Act.

Regarding the impact of this action on affected entities, relaxing the minimum

maturity requirement to 6.2 percent soluble solids is expected to benefit handlers and importers. Handlers and importers will be able to utilize one minimum maturity standard for the majority of shipments of kiwifruit. The majority of the kiwifruit producing countries now utilize 6.2 percent soluble solids as their guideline for minimum maturity. Importers have not experienced problems meeting the minimum maturity requirement of 6.5 percent soluble solids. Therefore, it is expected that importers will not have any difficulty meeting the relaxed minimum maturity requirement of 6.2 percent soluble solids.

Imports account for 67 percent of domestic shipments and enter the United States between the months of March and August. Recent yearly data indicate that imports during the months of September through March are negligible. New Zealand, Chile, and Italy were the principal sources of imported fruit during the 1999–2000 (August 1–July 31) season, and accounted for 98 percent of the total import shipments, with the remaining imports being supplied by France, Greece, and Canada. Chile has been the largest exporter of kiwifruit to the United States since 1993. Chile shipped approximately 8 million tray equivalents (about 7 pounds of fruit per tray) into the U.S. market during the 1999–2000 season, representing over 56 percent of total market share. New Zealand shipped approximately 3 million tray equivalents; Italy shipped approximately 1 million tray equivalents; and Greece, France, and Canada had combined shipments of approximately 200,500 tray equivalents. The amount of imported kiwifruit is expected to increase during the 2000–2001 season. Italy is expected to have a bumper crop and the U.S. tariff restrictions on imports from New Zealand were lifted in August 1999.

The Committee believes that lowering the minimum maturity requirements to 6.2 percent soluble solids will benefit large and small entities equally. Handlers and importers will be able to maximize shipments of early-season kiwifruit. The shipment of early-season kiwifruit is expected to result in increased grower returns, as such fruit normally commands a higher price than fruit harvested later in the season.

The amount of fruit harvested for the early market is dependent upon market conditions, the storability of fruit, and the overall size and quality of the crop. Since such information is not yet available, the Committee was not able to estimate the amount of fruit that will be shipped during the early season, nor estimate the amount of increased grower returns.

Additionally, recent consumer taste tests have shown that fruit containing at least 12.6 percent soluble solids has a high level of acceptability. Research conducted during the 1990's also has shown that fruit with 6.2 percent soluble solids and that is handled properly has the potential to ripen to 12.6 percent soluble solids. Relaxing the minimum maturity requirement should make more kiwifruit available to consumers early in the season.

In the past, some early season fruit failed to meet minimum maturity requirements at the time of inspection. Handlers had the option of re-conditioning the fruit or placing it into cold storage to ripen. After the soluble solids content was high enough to meet the minimum maturity requirements, the fruit was reinspected and the handler was billed for the original inspection and the reinspection. Relaxing the minimum maturity requirement to a 6.2 percent soluble solids level is expected to provide incentives for proper harvesting and handling of early fruit and to result in lower inspection costs. Thus, both large and small handlers should be able to benefit in the marketplace.

The Committee expressed concern that lowering the minimum maturity requirements to 6.2 percent soluble solids might result in a larger quantity of undersized fruit. However, the Committee expects growers to voluntarily test for minimum maturity and size before harvesting a field to limit harvesting unacceptable fruit.

Other alternatives have been suggested regarding the minimum maturity requirements, but will not adequately address the problem. The first alternative was to leave the regulation unchanged. However, this alternative will not address the changes in marketing conditions and in consumer acceptance of fruit with a lower level of soluble solids.

Another alternative considered was to regulate the current minimum maturity at the time of harvest. The Committee also considered utilizing the New Zealand ''Kiwi Start'' program which also tests for minimum maturity in the field at the time of harvest. These alternatives were not considered viable. The regulation of growers is not authorized under the Act.

Consideration was given to removing the 6.5 percent soluble solids minimum maturity requirement from the order and adding it to the California State Code of Regulations. This option was not acceptable to the Committee because of concerns regarding layers of regulation implementation, time, expenses, imports, and enforcement.

Another alternative discussed was to eliminate the minimum maturity requirement from the order. It was determined that there is still a need to have a maturity testing system in place to prevent the immature fruit from entering the market. Thus, this alternative was not adopted.

Utilizing a different testing method was also considered. Utilization of a dry weight test (total solids test) versus the currently used refractometer to measure maturity was discussed. This suggestion was not adopted because the test will be hard to implement, burdensome, and costly to the industry.

Finally, another alternative presented in the meeting was to increase the minimum maturity requirement. This alternative was not acceptable because it fails to recognize the recent findings that consumers find fruit with lower soluble solids acceptable.

This final rule relaxes the minimum maturity requirements under the kiwifruit marketing order and the import regulation. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit 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.

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.

Further, the Committee's meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the May 2, 2000, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses. No such comments were received.

A proposed rule concerning this action was published in the **Federal Register** on July 31, 2000 (65 FR 46658). Interested persons were invited to submit written comments until August 30, 2000. Copies of the rule were mailed or sent via facsimile to all known interested parties. Finally, the rule was made available through the Internet by the Office of the Federal Register.

One comment was received during the comment period in response to the proposal. The commenter, representing the European Community, supports the relaxation of the minimum maturity standard to 6.2 percent soluble solids, as it will simplify commerce. The European Community also urged the United States to incorporate relevant international standards of the Economic Commission for Europe of the UN (UN/ECE) and of the Organization for Economic Co-operation and Development (OECD) into our regulations, including the U.S. Standards for Grades of Kiwifruit (7 CFR 51.2335 to 51.2340). These requests are outside the scope of this rulemaking action. However, these suggestions will be reviewed for further appropriate action in connection with this program.

Accordingly, no changes will be made to the rule as proposed, based on the comments received.

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

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board 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 should be in effect promptly because the 2000–2001 harvest in California is expected to begin soon; (2) these changes were unanimously recommended by the Committee and interested persons had an opportunity to provide input; (3) handlers are aware of this change which was recommended at a public meeting; and (4) a 30-day comment period was provided for in the proposed rule, and the comment received supported the reduced maturity requirement.

List of Subjects

7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR parts 920 and 944 are amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR parts 920 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 920.302, paragraph (a)(3) is revised to read as follows:

§ 920.302 Grade, size, pack, and container regulations.

(a) * * *

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(3) *Maturity requirements.* Such kiwifruit shall have a minimum of 6.2 percent soluble solids at the time of inspection.

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PART 944—FRUITS; IMPORT REGULATIONS

3. In § 944.550, paragraph (a) is revised to read as follows:

§ 944.550 Kiwifruit import regulation.

(a) Pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended, the importation into the United States of any kiwifruit is prohibited unless such kiwifruit meets all the requirements of the U.S. No. 1 grade as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340), except that the kiwifruit shall be ''not badly misshapen,'' and an additional tolerance of 7 percent is provided for kiwifruit that is ''badly misshapen,'' and except that such kiwifruit shall have a minimum of 6.2 percent soluble solids. Such fruit shall be at least Size 45, which means there shall be a maximum of 55 pieces of fruit and the average weight of all samples in a specific lot must weigh at least 8 pounds (3.632 kilograms), provided that no individual sample may be less than 7 pounds 12 ounces (3.472 kilograms).

* * * * *

Dated: September 8, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–23496 Filed 9–8–00; 12:52 pm]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 2, 19, 30, 40, 50, 51, and 70

RIN 3150–AG53

Revision of References to Section 202 of the Energy Reorganization Act

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: This final rule makes a number of minor conforming changes to the regulations that reference Section 202 of the Energy Reorganization Act. The final rule is necessary to remove the footnotes that describe the provisions of Section 202 in order for all such references in the regulations to be consistent and complete. This final rule also corrects a typographical error in Part 19, makes other minor changes to conform Part 51 to other parts of this chapter, and reflects the abolishment of the Office for Analysis and Evaluation of Operational Data.

EFFECTIVE DATE: September 12, 2000.

FOR FURTHER INFORMATION CONTACT: Alzonia W. Shepard, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6864.

SUPPLEMENTARY INFORMATION:

Background

There are multiple references to Section 202 of the Energy Reorganization Act of 1974, in NRC regulations at 10 CFR 2.4, 30.4, 40.4, 50.2, 50.11, 70.4, and 70.11. These references are inconsistent in that some cite Section 202, while others describe provisions of Section 202 in a footnote. Those references that describe Section 202 are also incomplete because they do not reflect amendments to Section 202. Because of the inconsistency and incompleteness of the references to Section 202, and to avoid repeated changes to the regulations to reflect any amendments of Section 202, the NRC is amending the regulations to cite Section 202, rather than include text of Section 202 in a footnote.

The NRC is also making other minor conforming changes to its regulations:

deletion of 10 CFR 1.35, ''Office for Analysis and Evaluation of Operational Data'' because that office has been abolished; correction of a typographical error in 10 CFR 19.32 by substituting ''Title VII'' for ''Title VI;'' and deletion in 10 CFR 51.22(c)(1) of the reference to Part 0 because of the repeal of that part.

Because these amendments involve either matters of agency organization or minor conforming changes to existing regulations, the NRC has determined that notice and comment under the Administrative Procedure Act 5 U.S.C. 553(b) (A) and (B) is unnecessary and that good cause exists to dispense with such notice and comment. For these reasons, good cause also exists to dispense with the usual 30-day delay in the effective date. Therefore, the amendments are effective upon their publication in the **Federal Register**.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22 (c) (1) and (2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0044, –0017, –0020, –0011, –0021, and –0009.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

A regulatory analysis has not been prepared for this final rule because the final rule makes minor conforming changes to the regulations that reference Section 202 of the Energy Reorganization Act, and makes other minor changes to the regulations.

Backfit Analysis

The NRC has determined that these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1); therefore, a backfit analysis need not be prepared.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 1, 2, 19, 30, 40, 50, 51, and 70.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

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

Authority: Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85–256, 71 Stat. 579, Pub. L. 95–209, 91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat.1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

§ 1.35 [Removed]

2. Section 1.35 is removed.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

3. The authority citation for Part 2 continues to read as follows:

Authority: Secs.161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat.1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Sections 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 890, as amended by section 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

§ 2.4 [Amended]

4. In § 2.4, in the definition of the term ''person,'' footnote 4 is removed.

PART 19—NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS; INSPECTION AND INVESTIGATIONS

5. The authority citation for Part 19 continues to read as follows:

Authority: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282 2297f); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851).

6. Section 19.32 is revised to read as follows:

§ 19.32 Discrimination prohibited.

No person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity licensed by the Nuclear Regulatory Commission. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under Title VII of the Civil Rights Act of 1964. This remedy is not exclusive, however, and will not prejudice or cut off any other legal remedies available to a discriminatee.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

7. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 30.34(b) also issued under sec.184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

§ 30.4 [Amended]

8. In § 30.4, in the definition of the term ''person,'' footnote 1 is removed.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

9. The authority citation for Part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L.97–415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

§ 40.4 [Amended]

10. In § 40.4, in the definition ''person,'' footnote 1 is removed.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

11. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Section 50.37 also issued under E.O. 12829, 3 CFR 1993 Comp., p. 570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p. 333; E.O. 12968, 3 CFR 1995 Comp., p. 391. Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C 2237).

§ 50.2 [Amended]

12. In § 50.2, in the definition ''person,'' footnote 1 is removed.

§ 50.11 [Amended]

13. In § 50.11, paragraph (b), introductory text, footnote 2 is removed.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

14. The authority citation for Part 51 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953, (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842). Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041; and sec. 193, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80. and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also under Nuclear Waste Policy Act of 1982, sec 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

15. In § 51.22, paragraph (c)(1) is revised to read as follows:

§ 51.22 Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.

* * * * *

(c) * * *

(1) Amendments to Parts 1, 2, 4, 7, 8, 9, 10, 11, 19, 21, 25, 55, 75, 95, 110, 140, 150, 170, or 171 of this chapter, and actions on petitions for rulemaking relating to Parts 1, 2, 4, 7, 9, 10, 11, 14, 19, 21, 25, 55, 75, 95, 110, 140, 150, 170, or 171.

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

16. The authority citation for Part 70 is revised to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 193, 104 Stat. 2835 as amended by Pub.L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

§ 70.4 [Amended]

17. In § 70.4, in the definition ''person,'' footnote 9 is removed.

§ 70.11 [Amended]

18. In § 70.11, in the introductory text, footnote 10 is removed.

Dated at Rockville, Maryland, this 28th day of August, 2000.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 00–23356 Filed 9–11–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–18]

Revision of Class D Airspace, Robert Gray Army Airfield, TX; and Revocation of Class D Airspace, Hood Army Airfield, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class D Airspace at Robert Gray Army Airfield (RGAAF), TX and revokes the Class D Airspace at Hood Army Airfield (HAAF), TX. Two Class D Airspace areas (RGAAF, TX; and HAAF, TX) describe the same airspace. This redundancy is unnecessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft operating in the vicinity of RGAAF, TX, and HAAF, TX.

DATES: Effective 0901 UTC, November 30, 2000. Comments must be received on or before October 27, 2000.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 2000–ASW–18, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION:

This amendment to 14 CFR part 71 revises the Class D Airspace at Robert Gray Army Airfield (RGAAF), TX and revokes the Class D Airspace at Hood AAF, TX. Two Class D Airspace areas (RGAAF), TX and HAAf, TX) describe the same airspace. This redundancy is unnecessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft operating in the vicinity of RGAAF, TX, and HAAF, TX.

Class D airspace designations 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 71.1. The Class D airspace designations listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2000–ASW–18.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 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 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 5000 Class D airspace areas.

* * * * *

ASW TX D Robert Gray Army Airfield (AAF), TX [Revised]

Robert Gray Army Airfield (AAF), TX
(Lat. 31°03′54″ N., long. 97°49′40″ W.)
Hood Army Airfield (AAF), TX
(Lat. 31°08′16″ N., long. 97°42′51″ W.)
Killeen Municipal Airport, TX
(Lat. 31°05′09″ N., long. 97°41′11″ W.)

That airspace extending upward from the surface to and including 3,500 feet MSL

within a 4.7-mile radius of Robert Gray AAF and within a 3.8-mile radius of Hood AAF, excluding that airspace southeast of a direct line between lat. 31°04′39″ N., long. 97°44′16″ W., and the northeast intersection of the 4-mile radius of Killeen Municipal Airport and the 3.8-mile radius of Hood AAF.

* * * * *

ASW TX D Hood Army Airfield (AAF), TX [Revoked]

* * * * *

Issued in Forth Worth, TX, on August 29, 2000.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–23178 Filed 9–11–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–15]

Revision of Class E Airspace; Tulsa, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Tulsa, OK. The development of a Very High Frequency Omnidirectional Range (VOR) or Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), at William R. Pogue Municipal Airport, Sand Springs, OK, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to William R. Pogue Municipal Airport, Sand Springs, OK.

DATES: Effective 0901 UTC, November 30, 2000. Comments must be received on or before October 27, 2000.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 2000–ASW–15, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION:

This amendment to 14 CFR part 71 revises the Class E airspace at Tulsa, OK. The development of a VOR or GPS SIAP, at William R. Pogue Municipal Airport, Sand Springs, OK, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for IFR operations to William R. Pogue Municipal Airport, Sand Springs, OK.

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

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ''**ADDRESSES**.'' All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules of Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2000–ASW–15.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves

routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 605 Class E airspace areas extending upward from 700 feet or more above the surface of the Earth.

* * * * *

ASW OK E5 Tulsa, OK [Revised]

Tulsa International Airport, OK
(Lat. 36°11′54″N., long. 95°53′18″W.
Tulsa, Richard Lloyd Jones Jr. Airport, OK
(Lat. 36°02′23″N., long. 95°59′05″W.)
Sand Springs, William R. Pogue Municipal Airport, OK
(Lat. 36°10′31″N., long. 96°09′07″W.)
Tulsa VORTAC
(Lat. 36°11′47″N., long. 95°47′17″W.)
Glenpool VOR/DME
(Lat. 35°55′15″N., long. 95°58′07″W.)

That airspace extending upward from 700 feet above the surface within a 8–mile radius of Tulsa International Airport and within 1.6 miles each side of the 089° radial of the Tulsa VORTAC extending from the 8–mile radius to 11.9 miles east of the airport and within a 6.5–mile radius of Richard Lloyd Jones Jr. Airport and within a 7.2–mile radius of William R. Pogue Municipal Airport and within 4.1 miles each side of the 330° radial of the Glenpool VOR/DME extending from the 7.2–mile radius to 8.3 miles northwest of the airport.

* * * * *

Issued in Fort Worth, TX, on August 29, 2000.

Robert N. Stevens

Acting Manager, Air Traffic Division, Southwest Region

[FR Doc. 00–23176 Filed 9–11–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–17]

Revision of Class E Airspace; Fayetteville, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Fayetteville, AR. The decomissioning of the Microwave Landing System (MLS) at Drake Field, Fayetteville, AR has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations in the vicinity of Fayetteville, AR.

DATES: Effective 0901 UTC, November 30, 2000. Comments must be received on or before October 27, 2000.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 2000–ASW–17, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION:

This amendment to 14 CFR part 71 revises the Class E airspace at Fayetteville, AR. The decomissioning of the MLS at Drake Field, Fayetteville, AR has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations in the vicinity of Fayetteville, AR.

Class E airspace designations are published in Paragraphs 6004 and 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and

determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2000–ASW–17.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6004 Class E airspace Areas extending upward from the surface

* * * * *

ASW AR E4 Fayetteville, AR [Revised]

Fayetteville, Drake Field, AR
(Lat. 36°00′18″N., long. 94°10′12″W.)
Fayetteville LDA
(Lat. 36°00′26″N., long. 94°10′10″W.)

That airspace extending upward from the surface within 3 miles each side of the Fayetteville LDA 354° course inbound extending from the 4.1-mile radius of Drake Field to 12 miles south of the airport.

* * * * *

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

* * * * *

ASW AR E4 Fayetteville, AR [Revised]

Point of Origin
(Lat. 36°12′00″N., long. 94°14′01″W.)

That airspace extending upward from 700 feet above the surface within a 23.9-mile radius of the point of origin.

* * * * *

Issued in Forth Worth, TX, on August 29, 2000.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–23177 Filed 9–11–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD11–00–006]

RIN 2115–AE47

Drawbridge Operating Regulations; Honker Cut, San Joaquin County, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Commander, Eleventh Coast Guard District is temporarily changing the regulation governing the Eight Mile Road Drawbridge over Honker Cut, mile 0.3, San Joaquin County, California. The drawbridge need not open for vessel traffic and may remain in the closed-to-navigation position from 1201 a.m. on September 5 until 1159 p.m. on December 21, 2000. This temporary rule is issued to allow the preventative maintenance, cleaning and painting of the bridge.

DATES: This temporary rule is effective from 12:01 a.m. on September 5 until 11:59 p.m. on December 21, 2000.

ADDRESSES: The public docket and all documents referred to in this notice will be available for inspection and copying at the office of the Commander (oan–2), Building 50–6, Eleventh Coast Guard District, Coast Guard Island, Alameda, CA 94501–5100, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District, Building 50–6 Coast Guard Island, Alameda, CA 94501–5100, telephone 510–437–3516.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This rule is being promulgated without an NPRM due to the short time frame allowed between the submission of the request by the County of San Joaquin and the date of the maintenance. Additionally, extensive preliminary coordination with the waterway users was done and no negative impacts are expected. No negative comments were received and alternative navigational routes are available via Little Connection Slough or King Island Cut. The drawspan will be able to open if necessary, in the event of an emergency. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This rule should be made effective in less than 30 days due to the short time frame allowed between the submission of the request by the County of San Joaquin and the date of the maintenance.

Background and Purpose

On June 5, 2000, the County of San Joaquin requested a temporary change to

the operation of the Eight Mile Road Drawbridge over Honker Cut, mile 0.3, San Joaquin County, California to allow for maintenance, cleaning and painting. The drawspan provides 4 feet vertical clearance above flood stage when in the closed-to-navigation position. Navigation on the waterway consists of both commercial and recreational watercraft. Presently, the draw is required to open on signal if at least twelve hours advance notice is provided. The County requested the drawbridge be permitted to remain closed to navigation from September 5 until December 21, 2000. During this time the bridge will be enclosed with scaffolding and containment tarps while cleaning and painting operations are performed. This temporary drawbridge operation amendment has been coordinated with the waterway users. No objections to the proposed rule were raised.

Regulatory Evaluation

This temporary rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This is because the average number of requests for opening the drawspan are seven per year and alternate navigational routes are available.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this temporary rule will have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and government jurisdictions with populations of less than 50,000.

Due to the small number of requests to open the bridge per year and the availability of alternative routes, the Coast Guard expects the impact of this action to be minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b), that this action will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so they can better evaluate its effects on them and participate in the rulemaking process. Any individual who qualifies or, believes they qualify as a small entity, requiring assistance with the provisions of this rule, may contact David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District, Building 50–6, Coast Guard Island, Alameda, CA 94501–5100, telephone 510–437–3516.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under the principles and criteria contained in Executive Order 13132, and have determined this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Environmental

The Coast Guard considered the environmental impact of this temporary rule and concluded that under Chapter 2.B.2 and Figure 2–1, 32(e) of Commandant Instruction M16475.1C, this temporary rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. Sec. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.225 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From 12:01 a.m. on September 5 until 11:59 p.m. on December 21, 2000, § 117.161 is suspended and a new § 117.T162 is temporarily added to read as follows:

§ 117.T162 Honker Cut.

The draw of the Eight Mile Road Drawbridge over Honker Cut, mile 0.3, San Joaquin County, between Empire Tract and King Island at Stockton, California need not open for navigation from 12:01 a.m. on September 5 until 11:59 p.m. on December 21, 2000.

Dated: September 5, 2000.

E.R. Riutta,

Vice Admiral, U.S. Coast, Guard Commander, Eleventh Coast Guard District.

[FR Doc. 00–23331 Filed 9–11–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–6867–7]

RIN 2090–AA11

Project XL Site-Specific Rulemaking for the IBM Semiconductor Manufacturing Facility in Essex Junction, VT

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule will allow the implementation of a pilot project under the Project XL program that will provide site-specific regulatory flexibility under the Resource Conservation and Recovery Act (RCRA), as amended, for the International Business Machines Corporation (IBM) semiconductor manufacturing facility in Essex Junction, Vermont. The principal objective of this IBM Vermont XL project is to determine whether the wastewater treatment sludge resulting from an innovative copper metallization process (*i.e.,* an electroplating operation) should be designated a RCRA hazardous waste (F006), and thus be subject to RCRA regulatory controls. If, as a result of this XL project, the Agency determines that the wastewater treatment sludge (which does not otherwise exhibit a hazardous characteristic) need not be subject to RCRA hazardous waste regulations to be protective of human health and the environment and removes such sludges from the hazardous waste program, this would not only enhance the cost-effectiveness of the innovative process by removing the costs of such regulatory controls, but could also encourage the development and installation of this innovative process (or similar ones) by other semiconductor manufacturers. To achieve this, this rule provides an exemption for the copper metallization process from the narrative listing description of electroplating operations that result in an F006 wastewater treatment sludge.

DATES: This final rule is effective September 12, 2000.

ADDRESSES: A docket containing the rule, Final Project Agreement, supporting materials, and public comments is available for public inspection and copying at the RCRA Information Center (RIC), located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The RIC is open from 9 am to 4 pm Monday through Friday, excluding Federal holidays. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Docket Office at (703) 603–9230. Refer to RCRA docket number F–2000–IBMP–FFFFF. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost 15 cents per page.

Project materials are also available for review for today's action on the world wide web at http://www.epa.gov/projectxl/.

A duplicate copy of the docket is available for inspection and copying at U.S. EPA New England, One Congress Street, Suite 1100 (LIB), Boston MA, 02114–2023 during normal business hours. Persons wishing to view the duplicate docket at the Boston location are encouraged to contact Mr. John Moskal or Mr. George Frantz in advance, by telephoning (617) 918–1826 or (617) 918–1883, respectively. Information is also available on the world wide web at http://www.epa.gov.ProjectXL.

FOR FURTHER INFORMATION CONTACT: Mr. John Moskal or Mr. George Frantz, U.S. Environmental Protection Agency, New England (SPP), Assistance and Pollution Prevention Division, One Congress Street, Suite 1100, Boston, MA, 02114–2023. Mr. Moskal can be reached at (617) 918–1826 (or *moskal.john@epa.gov*) and Mr. Frantz can be reached at (617) 918–1883 (*or frantz.george@epa.gov*). Further information on today's action may also be obtained on the world wide web at http://www.epa.gov/projectxl.

SUPPLEMENTARY INFORMATION:

Outline of Today's Rule

The information presented in this preamble is organized as follows:

I. Authority
II. Overview of Project XL
III. Overview of the IBM Vermont XL Pilot Project
A. To Which Facilities Will the Rule Apply?
B. What Problems will the IBM Vermont XL Project Attempt to Address?
1. Background on Hazardous Waste Identification
2. Background on the F006 Hazardous Waste Listing
3. Site-Specific Considerations at the IBM Vermont Facility
C. What Solutions Are Being Tested by the IBM Vermont XL Project?
D. What Regulatory Changes Are Being Promulgated to Implement this Project?
1. Federal Regulatory Changes
2. State Regulatory Changes
E. Why is EPA Supporting this Approach to Removing a Waste From a Hazardous Waste Listing?
F. How Have Various Stakeholders Been Involved in this Project?
G. How Will this Project Result in Cost Savings and Paperwork Reduction?
H. What Are the Terms of the IBM Vermont XL Project and How Will They Be Enforced?
I. How Long Will this Project Last and When Will It Be Complete?
IV. Additional Information
A. How Does this Rule Comply With Executive Order 12866?
B. Is a Regulatory Flexibility Analysis Required?
C. Is an Information Collection Request Required for this Project Under the Paperwork Reduction Act?
D. Does this Project Trigger the Requirements of the Unfunded Mandates Reform Act?
E. RCRA & Hazardous and Solid Waste Amendments
1. Applicability of Rules in Authorized States
2. Effect on Vermont Authorization
F. How Does this Rule Comply with Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks?
G. Does this Rule Comply with Executive Order 12875: Enhancing Intergovernmental Partnerships?
H. How Does this Rule Comply with Executive Order 13084: Consultation and Coordination with Indian Tribal Governments?
I. Does this Rule Comply with the National Technology Transfer and Advancement Act?

I. Authority

EPA is publishing this regulation under the authority of sections 2002, 3001, 3002, 3003, 3006, 3010, and 7004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6912, 6921, 6922, 6923, 6926, 6930, 6937, 6938, and 6974).

II. Overview of Project XL

The Final Project Agreement (FPA) sets forth the intentions of EPA, VTDEC, and the IBM Essex Junction, VT facility with regard to a project developed under Project XL, an EPA initiative to allow regulated entities to achieve better environmental results with limited regulatory flexibility. The regulation, along with the FPA, will facilitate implementation of the project. Project XL—''eXcellence and Leadership''—was announced on March 16, 1995, as a central part of the National Performance Review and the Agency's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Project XL provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to request regulatory flexibility that will result in environmental protection that is superior to what would be achieved through compliance with current and reasonably-anticipated future regulations. These efforts are crucial to EPA's ability to test new strategies that reduce regulatory burden and promote economic growth while achieving better environmental and public health protection. EPA intends to evaluate the results of this and other Project XL projects to determine which specific elements of the project(s), if any, should be more broadly applied to other

regulated entities for the benefit of both the economy and the environment.

Under Project XL, participants in four categories—facilities, industry sectors, governmental agencies and communities—are offered the flexibility to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements, on the condition that they produce and demonstrate superior environmental performance.

The XL program is intended to encourage EPA to experiment with potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. As part of this experimentation, EPA may try out approaches or legal interpretations that depart from, or are even inconsistent with, longstanding Agency practice, so long as those interpretations are within the broad range of discretion enjoyed by the Agency in interpreting the statutes that it implements. EPA may also modify rules, on a site-specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute.

Adoption of such alternative approaches or interpretations in the context of a given XL project does not, however, signal EPA's willingness to adopt that interpretation as a general matter, or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether they are viable in practice and successful in the particular projects that embody them. Furthermore, as EPA indicated in announcing the XL program, EPA expects to adopt only a limited number of carefully selected projects. These pilot projects are not intended to be a means for piecemeal revision of entire programs. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative interpretation again, either generally or for other specific facilities.

EPA believes that adopting alternative policy approaches and interpretations, on a limited, site-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (provided that the Agency acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing re-evaluation of environmental programs, is reflected in a variety of statutory provisions, such as section 8001 of RCRA.

XL Criteria

To participate in Project XL, applicants must develop alternative environmental performance objectives pursuant to eight criteria: Superior environmental performance; cost savings and paperwork reduction; local stakeholder involvement and support; test of an innovative strategy; transferability; feasibility; identification of monitoring, reporting and evaluation methods; and avoidance of shifting risk burden. The XL projects must have the full support of the affected Federal, State, local and tribal agencies to be selected.

For more information about the XL criteria, readers should refer to the two descriptive documents published in the **Federal Register** (60 FR 27282, May 23, 1995 and 62 FR 19872, April 23, 1997), and the December 1, 1995 ''Principles for Development of Project XL Final Project Agreements'' document. For further discussion as to how the IBM Vermont XL project addresses the XL criteria, readers should refer to the Final Project Agreement available from the EPA RCRA docket, the U.S. EPA New England library, or the Project XL web page (see **ADDRESSES** section of today's preamble).

XL Program Phases

The Project XL program is compartmentalized into four basic developmental phases: The initial pre-proposal phase where the project sponsor comes up with an innovative concept that they would like EPA to consider as an XL pilot project; the second phase where the project sponsor works with EPA and interested stakeholders in developing an XL proposal; the third phase where EPA, local regulatory agencies, and other interested stakeholders review the XL proposal; and the fourth phase where the project sponsor works with EPA, local regulatory agencies, and interested stakeholders in developing a Final Project Agreement and legal mechanism. After promulgation of the final rule (or other legal mechanism) for the XL pilot, and after the Final Project Agreement has been signed by all designated parties, the XL pilot project proceeds onto implementation and evaluation.

Final Project Agreement

The Final Project Agreement (FPA) is a written voluntary agreement between the project sponsor and regulatory agencies. The FPA contains a detailed description of the pilot project. It addresses the eight Project XL criteria, and the expectation of the Agency that the XL project will meet those criteria. The FPA identifies performance goals and indicators that the project is yielding the expected environmental benefits, and specifically addresses the manner in which the project is expected to produce superior environmental benefits. The FPA also discusses the administration of the FPA, including dispute resolution and termination. The FPA for this XL project is available for review in the docket for today's action, and also is available on the world wide web at http://www.epa.gov/projectxl/.

III. Overview of the IBM Vermont XL Project

Today's rule will facilitate implementation of the FPA (the document that embodies EPA's intent to implement this project) that has been developed by EPA, the Vermont Department of Environmental Conservation (VTDEC), the IBM Essex Junction, VT facility, and other stakeholders. Today's rule, will not be effective in Vermont until the State has made conforming changes to its hazardous waste program.

A. To Which Facilities Will the Rule Apply?

This rule will apply only to the IBM Essex Junction, VT facility. Further, the regulatory modification only affects the copper metallization plating process (and the wastes generated by that process) that is the focus of this XL project; wastes resulting from any other operations at the facility are not affected by this rule.

B. What Problems Will the IBM Vermont XL Project Attempt To Address?

IBM does not believe the innovative copper metallization process it uses should be included among those electroplating operations that result in a wastewater treatment sludge that is specifically listed as a hazardous waste (F006), and that the regulatory controls (with associated increases in costs) provide no benefit to the environment.

1. Background on Hazardous Waste Identification

Under the current RCRA regulatory framework, the generator of a waste is responsible for determining whether the waste is hazardous (see 40 CFR 262.11). There are two ways that a waste is

determined to be hazardous; either the waste exhibits a characteristic of a hazardous waste as defined in 40 CFR 261.21, 261.22, 261.23, and 261.24, or the Agency has identified and specifically listed it as a hazardous waste in 40 CFR 261.31, 261.32, and 261.33. The wastewater treatment sludge that is the focus of this XL project typically does not exhibit a characteristic of hazardous waste; however, it does meet the narrative listing description for F006, generally described as wastewater treatment sludge from electroplating operations. In promulgating the hazardous waste listings, EPA presented the basis for the listings in 40 CFR part 261, appendix VII (*e.g.,* the basis for the F006 listing is the presence of cadmium, hexavalent chromium, nickel, and cyanide (complexed) in high enough concentrations to present a risk to human health and the environment if the waste is mismanaged). However, the hazardous waste listings are implemented based on their narrative descriptions, not by a waste-specific assessment of the hazardous constituents the wastes contain (such an assessment is how the ''toxicity characteristic'' is implemented pursuant to 40 CFR 261.24). To address those wastes that meet the narrative description of a listed hazardous waste but which the generator believes are nonhazardous, RCRA regulations provide a mechanism for the generator to petition the Agency for a determination that the wastes generated at their facility should not be regulated as hazardous (*i.e.,* a ''delisting'' pursuant to 40 CFR 260.22).

2. Background on the F006 Hazardous Waste Listing

On May 19, 1980, EPA promulgated the F006 hazardous waste listing, thereby designating wastewater treatment sludges from electroplating operations to be a RCRA hazardous waste (see 45 FR 33084). This wastestream is typically generated through the chemical treatment (e.g., lime precipitation) of wastewaters generated by plating operations to precipitate out certain toxic metals. These wastewaters are typically made up of spent plating/coating solutions and rinsewaters (from the rinsing of parts after being plated). As discussed in more detail in the background document supporting the listing of electroplating wastewater treatment sludge (F006), *Electroplating and Metal Finishing Operations* (pages 105–143) (available in the docket for this project), the Agency noted that while there are many various plating processes covered by the listing, they all generally involve hazardous constituents of concern at concentration levels requiring regulatory oversight to ensure that the management and disposal of such sludges will not result in damages to the environment or otherwise present a risk to human health and the environment. The metal constituents found to be commonly used in electroplating operations include cadmium, lead, chromium (in hexavalent form), copper, nickel, zinc, gold and silver. Cyanides, strong acids and strong bases are also used extensively in the general types of plating operations intended to be included in the listing description. As stated earlier, the specific constituents of concern cited as the basis for listing such wastewater treatment sludges as hazardous wastes were cadmium, hexavalent chromium, nickel, and cyanide (complexed) (see 40 CFR part 261, appendix VII).

While the actual composition of the electroplating-generated wastewater treatment sludges may vary due to the specific sequence of processing operations (commonly, more than one processing step is involved in a plating operation), in general, the sludges would be expected to contain significant concentrations of toxic metals, and possibly complexed cyanides in high concentrations if the cyanides are not properly isolated in the wastewater treatment process. Thus, the approach to this hazardous waste listing was one where the constituents typically used in the ''up-stream'' production process were, in part, the basis of the hazardous waste listing applicable to the residuals from wastewater treatment (typically alkaline precipitation of the heavy metals).

The Agency noted in the May 19, 1980 rulemaking that several plating operations were found to not contain significant concentrations of toxic metals or cyanides, such that the sludges resulting from the treatment of the wastewaters resulting from such operations would not be expected to pose a risk to human health and the environment. These operations were accordingly identified and specifically excluded from the F006 listing description: (1) sulfuric acid anodizing of aluminum, (2) tin plating on carbon steel, (3) zinc plating (segregated basis) on carbon steel, (4) aluminum or zinc-aluminum plating on carbon steel, (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel, and (6) chemical etching and milling of aluminum. (see 40 CFR 261.31).

Accordingly, the chemical make-up of the materials used in the plating operation was a major consideration in whether the wastewater treatment sludge would be designated a hazardous waste. Other factors that may impact the concentration levels of hazardous constituents in the wastewater treatment sludge are the type and shape of the article being plated, how much of the plating solution is carried over into the rinsewater, and the actual plating process being used.

3. Site-Specific Considerations at the IBM Vermont Facility

Since the IBM facility has many complicated manufacturing processes, a review of the basic steps in semiconductor manufacturing relevant to the metallization process which is the subject of this XL project may be useful. In general, the surface of a silicon wafer is cleaned and passivated (i.e., coated to provide an insulating layer) with a very thin silicon oxide layer. An organic photoresist is applied to the wafer and a circuit pattern is exposed onto the resist by shining light onto the wafer through a mask. The exposed photoresist is washed away, while the remainder is hardened to protect the insulating layer. After this is completed, the wafer is treated with inorganic liquids and gases to create the doped circuits which provide the semiconductor function. The hardened resist is then removed with organic solvents. At certain points in the process, metallization techniques are used to electronically connect the stacked layers of the semiconductor device. (The copper metallization process which is the basis for this XL project serves this purpose.) Wafer cleaning and rinsing steps, using mixtures of inorganic acids, oxidizers, and deionized water, occur after many of the process steps. This process cycle is repeated until a fully functional memory or logic device has been produced. After the circuits are built on the wafer, minute amounts of metal are deposited onto the wafer to produce the connections which marry the semiconductor to a module or circuit board for use in a computer. Finally, the wafer is sliced into individual chips for testing and placement onto substrates or modules for use in computer systems.

The new copper metallization process IBM has introduced, which is the subject of this XL project, serves to provide the interconnection of the device circuits, electronically connecting the stacked layers of the semiconductor device. In designing the process, IBM worked with the manufacturers of the plating solutions and the manufacturer of the plating tool (which holds the wafer) to minimize

waste and increase efficiency. The metallization process uses this specialized tool to bring only one side of the wafer into contact with the copper plating solution and applies an electrical current to plate the copper onto the wafer surface. Once the metallization process is complete, the wafer is rinsed with sulfuric acid over the plating bath to keep as much plating solution as possible in the bath (thus minimizing the amount of plating solution that is carried over into the rinsewaters). After the sulfuric acid rinse, the wafer is then rinsed with deionized water, and deionized water and sulfuric acid, in a pre-defined sequence, with the resulting rinsewaters being sent through the facility's wastewater treatment system.

For each wafer produced, approximately 3.5 grams of plating solution (containing approximately 0.065 grams of copper) is carried over to the rinsewaters. The volume of water used in the rinsing ranges from 0.5 to 0.7 gallons per wafer. Present projections show that copper mass and rinsewater volume will increase from approximately 110 grams/day and 1000–2000 gallons/day, respectively in the second quarter of 1999 to 180 grams/day and 2000–3000 gallons/day when the process is fully deployed in 2002.[1]

Also, the plating unit includes a 40-gallon reservoir for the plating solution that constantly filters and regenerates the solution. The goal in designing and operating this reservoir is to achieve an infinite bath life for the solution. However, it is currently necessary to replace a portion of the used plating solution in the reservoir with new solution. Currently, IBM drums the spent plating solution from the reservoir and sends the material for appropriate off-site management. IBM does not currently, nor plan to in the future, send the spent plating solution from the reservoir through the wastewater treatment system. Thus, the only plating solution that is or will be sent through the facility's wastewater treatment system is the relatively small amount that is carried over to the rinsewaters.

According to tests conducted by IBM, the plating solution currently being used by the facility does not contain any of the hazardous metal constituents and cyanides which were the focus of the original hazardous waste listing for wastewater treatment sludges from electroplating operations (and thus, these constituents would not be expected to be in the wastewater treatment sludge unless they are introduced from some other production process).

IBM reported other significant environmental benefits of converting to the copper metallization process that should be considered. The copper metallization process replaced an aluminum chemical vapor deposition process that required the vaporization of aluminum for deposit on the wafer. The use of the vapor deposition process entailed cleaning steps that used perfluorinated compounds (PFCs), which are global warming gases. By replacing a majority of the aluminum connections with copper, a significant reduction in global warming gases will be realized simply by minimizing the number of cleaning steps that use PFCs. It should also be noted that while such vapor deposition processes (and subsequent cleaning steps) are still required in other aspects of the semiconductor manufacturing process, IBM has developed an alternative cleaning method that uses dilute nitrogen trifluoride (NF_3) instead of PFCs, wherever appropriate. NF_3 has significantly less impact on global warming than PFCs.[2] The Agency recognizes this significant environmental benefit although it is not closely associated with the regulatory flexibility being sought by IBM.

IBM also reported that the new copper metallization process is much more energy efficient (30 to 40% less energy) than the aluminum chemical vapor deposition process it replaces. Similarly, the semiconductor chip produced by the copper metallization process is approximately 25% more energy-efficient than the chip it replaces. IBM expects this type of metallization process (or processes very similar) to become more common in the semiconductor manufacturing industry.

The aluminum chemical vapor deposition process which the copper metallization process replaces was dry and generated no wastewater or sludge that was subject to RCRA. From the time the copper metallization process was first introduced in 1996 until April of 1998, the copper metallization rinsewaters were collected and drummed for off-site disposal, keeping these wastewaters separate from the on-site wastewater treatment system. However, beginning in May 1998, the volume of rinsewater generated (approximately 250 gallons/day) became large enough to make it necessary to introduce the plating rinsewaters into the wastewater treatment system by commingling them with other wastewater streams generated on-site.

Even though the contribution of wastewaters from the copper metallization process to the total volume of wastewater being treated to generate the sludge is minimal (the volume of rinsewaters from the plating operation expected to be generated when the plating process is at full production is 1600 gallons/day, compared with an estimated 5,000,000 gallons/day volume of other on-site wastewaters), the sludge generated by the treatment of the commingled wastewaters is regulated as F006 because it meets the narrative listing description (i.e., wastewater treatment sludges from an electroplating operation).

Consequently, IBM's reported annual hazardous waste generation increased from 2.14 million pounds to 5.78 million pounds (1999 totals) and their waste management costs increased by $3,500 per year. Regarding IBM's waste management costs, the State of Vermont has deferred the hazardous waste tax that would normally apply to the generation of an F006 waste (approximately $225,000/year).[3]

While the increased waste management costs (as well as the associated recordkeeping and paperwork burdens) are relatively insignificant to the facility, they

[1] Prior to the copper electroplating operation, a thin layer of copper is applied to each wafer by vapor deposition. This very thin layer serves as a ''seed'' site for the deposition of the electroplated copper. A scheduled change (not related to this XL project) in the process for depositing the seed layer will result in additional copper being inadvertently deposited to the outermost edge of the wafer as a result of a change in the way the wafer is held in the tool.

Due to this change in the seed layer process, it will be necessary for future copper plating tools to remove the copper from the outer three millimeters of the wafer edge following the plating step to prepare the wafer for future processing. the copper on the edge is removed using an acid spray, in a process step termed ''edge bead removal.'' This will add 0.77 grams/day of copper to the wastewater stream, representing 5–10% of the load generated by the plating wastewaters and 0.5–1% of the load generated by the total copper process.

[2] There are a few cleaning processes at the facility where dilute NF_3 is an ineffective substitute for the PFC. However, for those operations, IBM has substituted a much more dilute PFC than was originally used, still achieving reductions in the global warming gas emissions.

[3] VTDEC accepted IBM's position that the F006 listing was inappropriately bringing the copper metallization waste stream into the hazardous waste system since the process did not contain the constituents for which F006 was listed. VTDEC has the discretion to waive the hazardous waste tax ''for cause shown.'' 32 VSA 10102(2). VTDEC took the position that the constituents for which F006 was listed took primacy over the narrative listing description that was intended to further describe wastes within the boundaries of the basis for listing, i.e. the constituents of concern. The constituents described the potential for harm to human health and the environment while the narrative listing description described the processes, known at the time, that were likely to contain the constituents.

nevertheless represent increased costs for no net environmental benefit.

C. What Solutions Are Being Tested by the IBM Vermont XL Project?

IBM's position is that they have adopted a more energy-and resource-efficient metallization process that employs a plating solution that is significantly different from the plating solutions used when the Agency promulgated the F006 listing, and therefore should not be subject to the F006 listing. This process has been specifically designed to minimize the use of the plating solution while maximizing the use of the copper metal in the solution, and minimizing the amount of solution that is carried over into the rinsewater. Because this metallization process does not contribute hazardous constituents to the wastewater treatment sludge, IBM sought to have its copper metallization process exempted from the F006 hazardous waste listing. Therefore, rather than pursue a delisting of the wastewater treatment sludge under 40 CFR 260.22, IBM has opted to work with the Agency, VTDEC, and interested stakeholders to develop and implement a pilot project under Project XL that will evaluate whether the copper metallization process should be included in the plating operations that result in F006 listed hazardous wastes. The Agency agrees with IBM that this XL project has a somewhat different aspect to it (i.e., the focus on the innovative production process that generates the wastewaters that, in turn, are treated to generate the listed sludge), such that the delisting approach is not the most suitable. A delisting approach would look strictly at the waste being delisted (as well as how it is managed), which in this situation is the result of treating large volumes of wastewaters from a variety of production processes (including wastewaters contributed by the innovative copper metallization process) and would not adequately reflect the specific environmental impacts associated with the innovative production process. It is the innovative production process that causes the wastewater treatment sludge to be designated a hazardous waste.

D. What Regulatory Changes Are Being Promulgated to Implement this Project?

To implement this XL project, the Agency is promulgating in today's notice a site-specific exemption in 40 CFR 261.4(b) (i.e., ''Solid wastes which are not hazardous wastes'') for the copper metallization process at the IBM Vermont facility from the F006 hazardous waste listing description. The Agency considered a modification to the F006 listing description in the table in 40 CFR 261.31(a), adding the copper metallization process at the IBM Vermont facility to the list of plating operations that are not intended to be subject to the listing. However, because the exemption will have a number of conditions that the IBM facility must follow to ensure that this XL project is protective of human health and the environment throughout the term of the project and to provide the information and data the Agency will use to consider whether the regulatory exemption should be incorporated into the national program, the Agency prefered placing the exemption language in 40 CFR 261.4(b). Regardless of where EPA chose to place the exemption language in the regulations (§ 261.31(a) or § 261.4(b)), the legal effect of the exemption is the same. EPA expects that should the exemption of the copper metallization process from the F006 listing be incorporated into the national program, EPA would then modify the listing description in 40 CFR 261.31(a).

E. Why Is EPA Supporting This Approach to Removing a Waste From a Hazardous Waste Listing?

The Agency agrees with IBM that this XL project has merit and has the potential to yield significant environmental benefits should this exemption be adopted on a national basis. Project XL offers the opportunity for the Agency to test its belief that this innovative process should be encouraged as one that is environmentally superior to existing technologies and to consider the appropriate regulatory status of the wastes from this technology before it is adopted by similar manufacturing facilities.

Further, this XL project offered EPA the opportunity to test a different approach to re-evaluating whether a specific wastestream is appropriately subject to regulatory controls as a listed waste. The existing mechanism for removing a waste from a listing on a site-specific basis is through a ''delisting'' petition under 40 CFR 260.22. However, the delisting approach is not the most suitable for the situation at the IBM Vermont facility because the scope of the listing itself is at issue. If IBM submitted a delisting petition, EPA would evaluate the hazardous nature of the entire wastewater treatment sludge (which is the wastestream that actually carries the F006 listing) rather than only that portion which is contributed by the copper metallization process. EPA generally prefers a delisting approach in most circumstances (it is, generally, a better approach for determining the hazardous nature of the actual waste material and whether the waste should be removed from the hazardous waste management program). In this instance, however, because the Agency wants to test whether IBM's copper metallization process should be included within the scope of the F006 listing, the Agency believed an evaluation of the ''production side'' of the sequence of operations that resulted in the wastewater treatment sludge is more useful. Specifically, because the wastewater treatment sludge is considered hazardous due to an ''upstream'' production unit meeting the narrative description of an electroplating operation, the Agency believed it was more appropriate to evaluate the upstream production unit to determine whether the hazardous waste listing on the ''downstream'' wastewater treatment sludge is warranted. Therefore, the Agency focused on the key parameters on the production side (in this case, the innovative design and operation of the copper metallization process) to make a determination of the regulatory status of the materials generated on the waste management side (in this case, the wastewater treatment sludge). This XL project therefore represents an opportunity for EPA to explore a different approach to determining whether a waste (in this case, one resulting from an innovative process) should continue to be subject to a hazardous waste listing. In other words, this approach may be considered another ''tool'' for the Agency to use in ''fine tuning'' the hazardous waste listings so that the narrative description of a listed waste appropriately delineates between those wastes that pose a risk to human health and the environment from those wastes (which arguably are generated by very similar processes) that do not pose such a risk. If, in fact, the absence of hazardous constituents of concern in the plating solution is determinative of whether the wastewater treatment sludge is hazardous (or whether any ''hazard'' in the sludge stems from the plating operation), this may become the key determining factor in similar requests for regulatory exemptions. Alternatively, if the Agency determines that the amount of plating solution that is carried over into the rinsewater (with focus on the shape of the parts being plated as well as the actual plating process) is the determining factor, this variable may be accounted for in future

rulemakings that address the F006 hazardous waste listing.

Because this is an innovative and highly efficient plating technology that also does not use the hazardous constituents common in most electroplating operations, EPA agrees with IBM's expectation that more semiconductor manufacturing facilities will seek to adopt this process (or ones very similar). The Agency agrees that if there is no adverse effect on the wastewater treatment sludge from the use of this metallization process, then regulating the sludge as a hazardous waste based solely on the fact that the metallization process continues to meet the narrative listing description of an electroplating operation may be imposing regulatory controls unnecessarily.

Further, the Agency believes that this innovative metallization process is environmentally superior to the old process it replaces, i.e., the aluminum chemical vapor deposition process. Not only is the metallization process 30 to 40% more energy efficient than the old process and the chips produced approximately 25% more energy efficient, there are also environmental benefits realized by discontinuing the use of the old process. While the metallization process generates a wastewater stream (and subsequent sludge from the treatment of that wastewater) that was not inherent to the aluminum chemical vapor deposition process, the old vapor deposition process entailed a cleaning step that used perfluorinated compounds (PFCs), which are global warming gases. The aluminum chemical vapor deposition process basically uses vaporized metal (in this case, aluminum) that is then deposited on the wafer, all of which occurs in ''chambers.'' The vaporized metal also gets deposited on the insides of these chambers, which must periodically be cleaned of this metal coating. Thus, by replacing the old process with the metallization process,10,000 metric tons of carbon equivalent (MTCE) of global warming gases will not be emitted to the air. However, it should be noted that, due to the nature of the materials and components involved in the semiconductor manufacturing process, the vapor deposition process cannot be completely eliminated from the production line, nor can the subsequent cleaning steps. (However, the number of cleaning steps requiring the use of PFCs has been significantly reduced and will continue to be reduced by the conversion to the innovative copper metallization process. The vapor deposition chambers, therefore, are a major focus in measuring the reduction in global warming gases.) Nevertheless, the Agency believes that the use of the innovative copper metallization process should be encouraged where possible. (Also, as stated earlier, IBM has developed an alternative cleaning process that uses dilute nitrogen trifluoride (NF_3) as a replacement for the PFCs. The dilute NF_3 is reported to have a much lower impact on global warming than the PFCs that would otherwise be used.)

From a public policy standpoint, it would not serve to encourage manufacturers to employ less-hazardous or more environmentally friendly and innovative production processes and ingredients in manufacturing operations if the Agency is unwilling to revisit existing hazardous waste listings to determine if the wastes resulting from such innovative process changes still warrant a hazardous waste listing. This XL project offers the Agency the opportunity to consider proactively the appropriate regulatory status of the wastewater treatment sludges generated from an innovative production process before it is widely used and commonplace and may serve as a precedent for other listed wastestreams.

Additionally, the Agency believes that to the extent the implementation of the hazardous waste regulations, including the actual requirements as well as the costs and administrative burdens, are directly related to the hazards being posed by the waste being regulated, this will improve the overall implementation of the program and compliance with the regulations. Just as it is important to ensure that those wastes that can pose significant risk to human health and the environment are properly controlled and managed, it is also important to not needlessly subject wastes that do not pose such risks to the same type of regulatory oversight.

F. How Have Various Stakeholders Been Involved in This Project?

IBM has established an appropriate stakeholder group to develop the Final Project Agreement for this XL pilot project and to evaluate IBM's plan and progress in implementing the project. IBM has solicited input on this project from a wide range of stakeholders including local and national environmental groups, neighborhood associations, and industry trade associations. Stakeholders have been notified of this project by direct mail, telephone, and notification in the local press.

In addition, IBM has conducted a series of meetings with select stakeholders who had agreed to serve as commenters for this project. They had been briefed on the proposal, and were supportive of the project as described. The State of Vermont also supports the project and is a Project Signatory to the Agreement. Stakeholder meetings were held at the IBM facility on February 17 and March 24, 2000.

IBM has kept an open dialogue with interested stakeholders since the project's inception and will continue to involve any interested stakeholders in the project's development. In addition, EPA and IBM will make all project-related documents and events publically accessible through announcements, EPA's web site and public dockets.

G. How Will This Project Result in Cost Savings and Paperwork Reduction?

As stated earlier, introducing the rinsewaters from the metallization process into the wastewater treatment system has caused the entire volume of wastewater treatment sludge to be defined as a hazardous waste, increasing the facility's waste management costs by approximately $3,500/year. Removing the hazardous waste designation will eliminate this expenditure. Also, as discussed earlier, the State of Vermont has waived the waste tax that would otherwise apply to IBM's generation of F006 waste (approximately $225,000/year). (Note that the State of Vermont is not authorized to do hazardous waste delistings which could change the regulatory status of the sludge from a listed hazardous waste to a nonhazardous waste; however, the State has more flexibility in assessing hazardous waste generation taxes. Had the State not granted this tax waiver, the cost savings associated with this specific XL project would be considered significant.) Finally, IBM expects to see cost savings of $100,000 to $200,000 per year when the conversion to the copper metallization process has been fully implemented. The sources of these cost savings include reduced material costs (*e.g.*, reduction in the use and resultant purchase of PFCs) and reduced energy expenditures.

Because the IBM Vermont facility will continue to be regulated as a Large Quantity Generator due to the volume of hazardous wastes generated at other parts of the facility, and because there is no State hazardous waste tax being applied, the actual reduction in paperwork and cost savings related to waste management are not significant. The wastewater treatment sludge will no longer be considered a hazardous waste (unless the sludge otherwise exhibits a characteristic of hazardous waste) and so will not have to be counted in the facility's annual report.

While this reduction in reported hazardous waste generated will certainly improve the facility's public image, it will save only a little time and money in preparing the annual report for the hazardous wastes generated by other facility operations.

There are also cost savings realized by not having to use a hazardous waste transporter or hazardous waste manifest to ship the sludge off-site for further management. Also, because the sludges are currently shipped to Canada for treatment and disposal, IBM must currently file an annual ''Request for Export of Hazardous Waste'' with Canada, requiring 2 hours of engineering time, as well as several hours of phone calls and follow-up to ensure the application is expeditiously processed. Such an application and expenditure of resources is not needed if the sludges being shipped to Canada are not hazardous wastes.

EPA, as well as VTDEC, will also benefit from some paperwork reduction and cost savings by not having to process and track the manifests and export documents that will otherwise have to be processed without this XL project.

In considering the cost savings and paperwork reduction associated with this XL project, it is important to consider the potential impacts if this pilot project proves successful and the regulatory flexibility (*i.e.*, the exemption of the copper metallization unit from the listing description of F006 wastes) is promulgated on a national basis. The conversion to the copper metallization process represents significant operational cost savings for IBM. As a result, on a national level the overall cost (and paperwork) reduction that would be realized may be quite significant, assuming this innovative technology (or a similar one) is adopted by more semiconductor manufacturers. While there is little question that a national exemption patterned after this site-specific exemption would result in cost and paperwork reductions, because of the variability in how States implement their waste taxes, or other mechanisms for raising revenues based on the hazardous wastes generated in the State, it is difficult to estimate a projected savings on such taxes on a national level.

H. What Are the Terms of the IBM Vermont XL Project and How Will They Be Enforced?

As stated earlier, to allow for the implementation of the XL pilot project, EPA is today modifying the current regulatory framework in 40 CFR 261.4(b) to provide a site-specific exemption for IBM's copper metallization process from the narrative description for F006 listed hazardous waste (see 40 CFR 261.31(a)), thus removing the F006 listing designation from the sludges generated by the treatment of the wastewaters generated by the copper metallization process. VTDEC likewise intends to modify its State hazardous waste program to allow for the same removal of the F006 listing designation from the wastewater treatment sludge. It should be noted that the Agency intends that the exemption will apply to all the wastewater treatment sludge resulting from the treatment of the copper metallization rinsewaters at the site, including those sludges that are in the process of being generated, sludges that result from rinsewaters already in the wastewater treatment system, and sludges that have been removed from the wastewater treatment system and are being stored pending off-site transportation.

Through the development of the Final Project Agreement (FPA), IBM has agreed to comply with several key criteria as conditions for this exemption, which are included in the regulatory text of the exemption. These conditions are focused on proving the environmental benefits of removing the F006 listing from the wastewater treatment sludges (or the inappropriateness of designating these wastewater treatment sludges F006 hazardous waste) and to gather the data and other information that would allow the Agency to make a determination regarding the possible future adoption of this site-specific exemption as a nationwide generic exemption. IBM has also agreed to commit to a good faith effort to achieve several goals related to superior environmental performance. (Note that while achieving these goals is not being proposed as a condition of the exemption due to their uncertain nature, an evaluation of the success of this XL pilot project will certainly be influenced by IBM's success in achieving their stated goals, as well as the effort expended to achieve the goals.)

As conditions of the site-specific exemption, IBM must report on the following:

(1) IBM must analyze the plating bath and rinsewaters generated from the copper metallization process. The analysis must be conducted on samples that are representative of rinsewaters and plating baths associated with all the tools that are converted to the copper metallization process and will measure for the presence of volatiles, semi-volatiles, and metals (using the methods specified in 40 CFR part 264, appendix IX) in both the plating bath and rinsewaters. IBM must collect, analyze and submit this data twice a year (by January 15 and July 15 of each year).

(2) In addition, IBM must report on the status of the greenhouse gas emission reduction project at the facility. This will include greenhouse gas reductions achieved from the conversion to the copper metallization process and IBM's additional voluntary initiative to reduce greenhouse gas emissions from its other chamber cleaning processes. IBM will track usage of C_2F_6, the primary PFC used in the chamber cleaning operation, and estimate the reduction in PFC emissions based on the reduction in chemical usage. Likewise, IBM will provide similar data for the chemicals that replace the C_2F_6, specifically, dilute nitrogen trifluoride (NF_3), and dilute C_2F_6, including the quantity of NF_3 used in the cleaning process, and the carbon equivalent potential of the NF_3 to calculate the global warming impact of the converted processes. IBM will report on the number of chambers converted during the reporting period and remaining to be converted to achieve the site global warming gas emission reduction goal along with an update of the calculated greenhouse gas emission reductions for the facility, both in terms of total mass emitted and mass emitted normalized to production.[4] Submissions of these data are likewise due twice a year, by January 15 and July 15 in conjunction with the plating bath and rinsewater analyses.

In addition, IBM commits to monitor copper concentrations in its wastewater effluent for conformance with their current NPDES (National Pollutant Discharge Elimination System) permit. IBM's stated goal is to maintain copper concentrations in the effluent discharge of less than 40% of the discharge limit.

I. How Long Will This Project Last and When Will It Be Completed?

This project will be in effect for five years from the date that the final rulemaking becomes effective (the latter of the EPA final rule or the VTDEC final rule) unless it is terminated earlier or extended by all Project Signatories (if the FPA is extended, the comments and input of stakeholders will be sought and a **Federal Register** document will be

[4] The Agency notes that in the proposed rule language, the condition for reporting on estimated greenhouse gas emissions and reductions from a 1995 base year would cease after 2004 or once IBM had achieved their facility-wide goal of 50% reduction, whichever comes first. The draft FPA identified the goal as a 40% reduction. No comments were received noting this discrepancy. The correct goal is 40% and the regulatory language being promulgated today has been amended to reflect the correct 40% goal.

published). Any Project Signatory may terminate its participation in this project at any time in accordance with the procedures set forth in the FPA. The project will be completed at the conclusion of the five-year anniversary of the final rulemaking or at a time earlier or later determined by the amount of information gathered to date and the interest of the parties involved.

Upon completion of the project term, EPA and VTDEC commit to evaluating the project. If the project results indicate that it was a success, EPA will consider transferring the regulatory flexibility (or some similar flexibility) to the national RCRA program (through rulemaking procedures). Should the project results indicate that the project was not successful, EPA will promulgate a rule to remove the site-specific exemption. Absent any regulatory action on the part of the Agency, the implementing rule (*i.e.*, the site-specific exemption) will remain in effect as long as IBM continues to meet its conditions (*i.e.*, EPA and VTDEC intend to allow IBM to continue operating under the site-specific rule). However, as for any conditional exemption, if at any time, should IBM fail to meet the conditions of the site-specific exemption, the exemption is not applicable. Also, the Agency may promulgate a rule to withdraw the exemption at any time, subject to the procedures agreed to in the Final Project Agreement (FPA), including, but not limited to, a substantial failure on the part of any Project Signatory to comply with the terms and conditions of the FPA or if the exemption becomes inconsistent with future statutory or regulatory requirements.

IV. Additional Information

A. How Does This Rule Comply With Executive Order 12866?

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in 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 entitlement, grants, user fees, or loan programs of 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.

Because the annualized cost of this final rule will be significantly less than $100 million and will not meet any of the other criteria specified 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. Is a Regulatory Flexibility Analysis Required?

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This rule will not have a significant impact on a substantial number of small entities because it only affects the IBM facility in Essex Junction, VT and it is not a small entity. Therefore, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

C. Is EPA Required To Submit a Rule Report Under the Congressional Review Act?

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. Section 804, however, exempts from Section 801 the following types of rules: rules of particular applicability, rules relating to agency management and personnel, and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804 (3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

D. Is an Information Collection Request Required for This Project Under the Paperwork Reduction Act?

This action applies only to one facility, and therefore requires no information collection activities subject to the Paperwork Reduction Act, and therefore no information collection request (ICR) will be submitted to OMB for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

E. Does This Project Trigger the Requirements of the Unfunded Mandates Reform Act?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, 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.

As noted above, this rule is applicable only to one facility in Vermont. EPA has determined that this rule contains no regulatory requirements that might

significantly or uniquely affect small governments. EPA has also determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. RCRA & Hazardous and Solid Waste Amendments of 1984

1. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program for hazardous waste within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) States with final authorization administer their own hazardous waste programs in lieu of the Federal program. Following authorization, EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA.

After authorization, Federal rules written under RCRA (non-HSWA), no longer apply in the authorized state except for those issued pursuant to the Hazardous and Solid Waste Act Amendments of 1984 (HSWA). New Federal requirements imposed by those rules do not take effect in an authorized State until the State adopts the requirements as State law.

In contrast, under section 3006(g) of RCRA, new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time they take effect in nonauthorized States. EPA is directed to carry out HSWA requirements and prohibitions in authorized States until the State is granted authorization to do so.

2. Effect on Vermont Authorization

Today's rule, will be promulgated pursuant to non-HSWA authority, rather than HSWA. Vermont has received authority to administer most of the RCRA program; thus, authorized provisions of the State's hazardous waste program are administered in lieu of the Federal program. Vermont has received authority to administer the regulations that specifically identify hazardous wastes by listing them. As a result, the rule to modify the listing for F006 hazardous waste would not be effective in Vermont until the State adopts the modification. It is EPA's understanding that subsequent to the promulgation of this rule, Vermont intends to propose rules or other legal mechanisms to provide the exemption for the copper metallization process from the F006 listing description. EPA may not enforce these requirements until it approves the State requirements as a revision to the authorized State program.

G. How Does This Rule Comply with Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks?

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

H. Does This Rule Comply With Executive Order 13132: Federalism?

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

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

This 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 level of government, as specified in Executive Order 13132. The exemption outlined in today's rule will not take effect unless Vermont chooses to adopt the rule or other legal implementing mechanism. 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 fully coordinate and consult with the state and local officials in developing this rule.

I. How Does This Rule Comply With Executive Order 13084: Consultation and Coordination with Indian Tribal Governments ?

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must 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 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. There are no communities of Indian tribal governments located in the vicinity of the facility. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

J. Does This Rule Comply With the National Technology Transfer and Advancement Act ?

As noted in the proposed rule, 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 standard. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous materials, Waste treatment and disposal, Recycling.

Dated: September 1, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 261 of Chapter I of Title 40 of the Code of Federal Regulations is to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

2. Section 261.4 is amended by adding paragraph (b)(16) to read as follows:

§ 261.4 Exclusions.

* * * * *

(b) * * *

(16) Sludges resulting from the treatment of wastewaters (not including spent plating solutions) generated by the copper metallization process at the International Business Machines Corporation (IBM) semiconductor manufacturing facility in Essex Junction, VT, are exempt from the F006 listing, provided that:

(i) IBM provides the Agency with semi-annual reports (by January 15 and July 15 of each year) detailing constituent analyses measuring the concentrations of volatiles, semi-volatiles, and metals using methods presented in part 264, appendix IX of this chapter of both the plating solution utilized by, and the rinsewaters generated by, the copper metallization process;

(ii) IBM provides the agency with semi-annual reports (by January 15 and July 15 of each year), through the year 2004, or when IBM has achieved its facility-wide goal of a 40% reduction in greenhouse gas emissions from a 1995 base year (when normalized to production), whichever is first, that contain the following:

(A) Estimated greenhouse gas emissions, and estimated greenhouse gas emission reductions. Greenhouse gas emissions will be reported in terms of total mass emitted and mass emitted normalized to production; and

(B) The number of chemical vapor deposition chambers used in the semiconductor manufacturing production line that have been converted to either low flow C_2F_6 or NF_3 during the reporting period and the number of such chambers remaining to be converted to achieve the facility goal for global warming gas emission reductions.

(iii) No significant changes are made to the copper metallization process such that any of the constituents listed in 40 CFR part 261, appendix VII as the basis for the F006 listing are introduced into the process.

* * * * *

[FR Doc. 00–23239 Filed 9–11–00; 8:45 am]

BILLING CODE 6560–50–U

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–6 and 102–5

[FPMR Amendment A–55]

RIN 3090–AH08

Home-to-Work Transportation

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is revising Federal Property Management Regulations (FPMR) by moving coverage on the official use of Government passenger carriers between residence and place of employment (i.e. home-to-work transportation) into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

EFFECTIVE DATE: September 12, 2000.

FOR FURTHER INFORMATION CONTACT: James B. Vogelsinger, Federal Vehicle Policy Division (MTV), 202–501–1764 or e-mail at *vehicle.policy@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

As parts of the FPMR are rewritten, they are being moved into the Federal Management Regulation (FMR). Subpart 101–6.4 of the Federal Property Management Regulations (FPMR) has been rewritten as a part of GSA's regulatory initiative to update, streamline, and clarify the FPMR. During this rewriting process, GSA surveyed the Federal Fleet Policy Council (FEDFLEET) members in November 1999 and considered the comments received.

The scope provision of the current regulation in subpart 101–6.400 states that the rule does not apply to use of a Government passenger carrier in conjunction with official travel in performing temporary duty (TDY) assignments. In redrafting the regulation, GSA revised the structure of the rule. While the scope of this final rule states that the regulation governs the use of Government passenger carriers to transport employees between their homes and place of work, the rule still does not apply to the use of a Government passenger carrier in conjunction with official travel in performing temporary duty (TDY) assignments, or permanent change of station (PCS) travel, as is made clear in § 102–5.20 of this final rule.

GSA occasionally receives inquiries about the tax implications for employees using Government passenger carriers for transportation between their residence and place of employment. Agencies and employees should examine their tax responsibilities and consult the Internal Revenue Service as needed.

Another subject about which GSA receives questions involves Government contractor use of Government passenger carriers. While this regulation, in most provisions, addresses Federal officers or employees exclusively, 41 CFR 102–34.230 states that an agency cannot authorize a Government contractor to use motor vehicles between residence and place of employment unless authorized in accordance with 31 U.S.C. 1344 and this regulation.

B. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action

for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This final rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 101–6 and 102–5

Government property management.

For the reasons set forth in the preamble, GSA amends 41 CFR chapters 101 and 102 as follows:

CHAPTER 101—[AMENDED]

1. The authority citation for part 101–6 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); 31 U.S.C. 1344(e)(1).

PART 101–6—MISCELLANEOUS REGULATIONS

2. Subpart 101–6.4 consisting of § 101–6.400 is revised to read as follows:

Subpart 101–6.4—Official Use of Government Passenger Carriers Between Residence and Place of Employment

§ 101–6.400 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102–1 through 102–220).

For policy concerning official use of Government passenger carriers between residence and place of employment previously contained in this part, see FMR part 5 (41 CFR part 102–5), Home-to-Work Transportation.

CHAPTER 102—[AMENDED]

3. Part 102–5 is added to subchapter A of chapter 102 to read as follows:

PART 102–5—HOME-TO-WORK TRANSPORTATION

Subpart A—General

Sec.
102–5.5 Preamble.
102–5.10 What does this part cover?
102–5.15 Who is covered by this part?
102–5.20 Who is not covered by this part?
102–5.25 What additional guidance concerning home-to-work transportation should Federal agencies issue?
102–5.30 What definitions apply to this part?

Subpart B—Authorizing Home-to-Work Transportation

102–5.35 Who is authorized home-to-work transportation?
102–5.40 May the agency head delegate the authority to make home-to-work determinations?
102–5.45 Should determinations be completed before an employee is provided with home-to-work transportation?
102–5.50 May determinations be made in advance for employees who respond to unusual circumstances when they arise?
102–5.55 How do we prepare determinations?
102–5.60 How long are initial determinations effective?
102–5.65 What procedures apply when the need for home-to-work transportation exceeds the initial period?
102–5.70 What considerations apply in making a determination to authorize home-to-work transportation for field work?
102–5.75 What circumstances do not establish a basis for authorizing home-to-work transportation for field work?
102–5.80 What are some examples of positions that may involve field work?
102–5.85 What information should our determination for field work include if positions are identified rather than named individuals?
102–5.90 Should an agency consider whether to base a Government passenger carrier at a Government facility near the employee's home or work rather than authorize the employee home-to-work transportation?
102–5.95 Is the comfort and/or convenience of an employee considered sufficient justification to authorize home-to-work transportation?
102–5.100 May we use home-to-work transportation for other than official purposes?
102–5.105 May others accompany an employee using home-to-work transportation?

Subpart C—Documenting and Reporting Determinations

102–5.110 Must we report our determinations outside of our agency?
102–5.115 When must we report our determinations?
102–5.120 What are our responsibilities for documenting use of home-to-work transportation?

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); 31 U.S.C. 1344(e)(1).

Subpart A—General

§ 102–5.5 Preamble.

(a) The questions and associated answers in this part are regulatory in effect. Thus compliance with the written text of this part is required by all to whom it applies.

(b) The terms ''we,'' ''I,'' ''our,'' ''you,'' and ''your,'' when used in this part, mean you as a Federal agency, an agency head, or an employee, as appropriate.

§ 102–5.10 What does this part cover?

This part covers the use of Government passenger carriers to transport employees between their homes and places of work.

§ 102–5.15 Who is covered by this part?

This part covers Federal agency employees in the executive, judicial, and legislative branches of the Government, with the exception of employees of the Senate, House of Representatives, Architect of the Capitol, and government of the District of Columbia.

§ 102–5.20 Who is not covered by this part?

This part does not cover:

(a) Employees who are on official travel (TDY); or

(b) Employees who are on permanent change of station (PCS) travel; or

(c) Employees who are essential for the safe and efficient performance of intelligence, counterintelligence, protective services, or criminal law enforcement duties when designated in writing as such by their agency head.

§ 102–5.25 What additional guidance concerning home-to-work transportation should Federal agencies issue?

Each Federal agency using Government passenger carriers to provide home-to-work transportation for employees who are essential for the safe and efficient performance of intelligence, counterintelligence, protective services, or criminal law enforcement duties should issue guidance concerning such use.

§ 102–5.30 What definitions apply to this part?

The following definitions apply to this part:

Agency head means the highest official of a Federal agency.

Clear and present danger means highly unusual circumstances that present a threat to the physical safety of the employee or their property when the danger is:

(1) Real; and

(2) Immediate or imminent, not merely potential; and

(3) The use of a Government passenger carrier would provide protection not otherwise available.

Compelling operational considerations means those circumstances where home-to-work transportation is essential to the conduct of official business or would substantially increase a Federal agency's efficiency and economy.

Emergency means circumstances that exist whenever there is an immediate, unforeseeable, temporary need to provide home-to-work transportation for those employees necessary to the uninterrupted performance of the agency's mission. (An emergency may occur where there is a major disruption of available means of transportation to or from a work site, an essential Government service must be provided, and there is no other way to transport those employees.)

Employee means a Federal officer or employee of a Federal agency, including an officer or enlisted member of the Armed Forces.

Federal agency means:

(1) A department (as defined in section 18 of the Act of August 2, 1946 (41 U.S.C. 5a));

(2) An executive department (as defined in 5 U.S.C. 101);

(3) A military department (as defined in 5 U.S.C. 102);

(4) A Government corporation (as defined in 5 U.S.C. 103(1));

(5) A Government controlled corporation (as defined in 5 U.S.C. 103(2));

(6) A mixed-ownership Government corporation (as defined in 31 U.S.C. 9101(2));

(7) Any establishment in the executive branch of the Government (including the Executive Office of the President);

(8) Any independent regulatory agency (including an independent regulatory agency specified in 44 U.S.C. 3502(10));

(9) The Smithsonian Institution;

(10) Any nonappropriated fund instrumentality of the United States; and

(11) The United States Postal Service.

Field work means official work requiring the employee's presence at various locations other than his/her regular place of work. (Multiple stops (itinerant-type travel) within the accepted local commuting area, limited use beyond the local commuting area, or transportation to remote locations that are only accessible by Government-provided transportation are examples of field work.)

Home means the primary place where an employee resides and from which the employee commutes to his/her place of work.

Home-to-work transportation means the use of a Government passenger carrier to transport an employee between his/her home and place of work.

Passenger carrier means a motor vehicle, aircraft, boat, ship, or other similar means of transportation that is owned (including those that have come into the possession of the Government by forfeiture or donation), leased, or rented (non-TDY) by the United States Government.

Work means any place within the accepted commuting area, as determined by the Federal agency for the locality involved, where an employee performs his/her official duties.

Subpart B—Authorizing Home-to-Work Transportation

§ 102–5.35 Who is authorized home-to-work transportation?

By statute, certain Federal officials are authorized home-to-work transportation, as are employees who meet certain statutory criteria as determined by their agency head. The Federal officials authorized by statute are the President, the Vice-President, and other principal Federal officials and their designees, as provided in 31 U.S.C. 1344(b)(1) through (b)(7). Those employees engaged in field work, or faced with a clear and present danger, an emergency, or a compelling operational consideration may be authorized home-to-work transportation as determined by their agency head. No other employees are authorized home-to-work transportation.

§ 102–5.40 May the agency head delegate the authority to make home-to-work determinations?

No, the agency head may not delegate the authority to make home-to-work determinations.

§ 102–5.45 Should determinations be completed before an employee is provided with home-to-work transportation?

Yes, determinations should be completed before an employee is provided with home-to-work transportation unless it is impracticable to do so.

§ 102–5.50 May determinations be made in advance for employees who respond to unusual circumstances when they arise?

Yes, determinations may be made in advance when the Federal agency wants to have employees ready to respond to:

(a) A clear and present danger;

(b) An emergency; or

(c) A compelling operational consideration.

Note to § 102–5.50: Implementation of these determinations is contingent upon one of the three circumstances occurring. Thus, these may be referred to as ''contingency determinations.''

§ 102–5.55 How do we prepare determinations?

Determinations must be in writing and include the:

(a) Name and title of the employee (or other identification, if confidential);

(b) Reason for authorizing home-to-work transportation; and

(c) Anticipated duration of the authorization.

§ 102–5.60 How long are initial determinations effective?

Initial determinations are effective for no longer than:

(a) Two years for field work, updated as necessary; and

(b) Fifteen days for other circumstances.

§ 102–5.65 What procedures apply when the need for home-to-work transportation exceeds the initial period?

The agency head may approve unlimited subsequent determinations, when the need for home-to-work transportation exceeds the initial period, for no longer than:

(a) Two years each for field work, updated as necessary; and

(b) Ninety calendar days each for other circumstances.

§ 102–5.70 What considerations apply in making a determination to authorize home-to-work transportation for field work?

Agencies should consider the following when making a determination to authorize home-to-work transportation for field work:

(a) The location of the employee's home in proximity to his/her work and to the locations where non-TDY travel is required; and

(b) The use of home-to-work transportation for field work should be authorized only to the extent that such transportation will substantially increase the efficiency and economy of the Government.

§ 102–5.75 What circumstances do not establish a basis for authorizing home-to-work transportation for field work?

The following circumstances do not establish a basis for authorizing home-to-work transportation for field work:

(a) When an employee assigned to field work is not actually performing field work.

(b) When the employee's workday begins at his/her work; or

(c) When the employee normally commutes to a fixed location, however far removed from his/her official duty station (for example, auditors or investigators assigned to a defense contractor plant).

Note to § 102–5.75: For instances where an employee is authorized home-to-work transportation under the field work provision, but performs field work only on an intermittent basis, the agency shall establish procedures to ensure that a Government passenger carrier is used only when field work is actually being performed. Although some employees' daily work station is not located in a Government office, these employees are not performing field work. Like all Government employees, employees working in a ''field office'' are responsible for their own commuting costs.

§ 102–5.80 What are some examples of positions that may involve field work?

Examples of positions that may involve field work include, but are not limited to:

(a) Quality assurance inspectors;

(b) Construction inspectors;

(c) Dairy inspectors;

(d) Mine inspectors;

(e) Meat inspectors; and

(f) Medical officers on outpatient service.

Note to § 102–5.80: The assignment of an employee to such a position does not, of itself, entitle an employee to receive daily home-to-work transportation.

§ 102–5.85 What information should our determination for field work include if positions are identified rather than named individuals?

If positions are identified rather than named individuals, your determination for field work should include sufficient information to satisfy an audit, if necessary. This information should include the job title, number, and operational level where the work is to be performed (e.g., five recruiter personnel or, positions at the Detroit Army Recruiting Battalion).

Note to § 102–5.85: An agency head may elect to designate positions rather than individual names, especially in positions where rapid turnover occurs.

§ 102–5.90 Should an agency consider whether to base a Government passenger carrier at a Government facility near the employee's home or work rather than authorize the employee home-to-work transportation?

Yes, situations may arise where, for cost or other reasons, it is in the Government's interest to base a Government passenger carrier at a Government facility located near the employee's home or work rather than authorize the employee home-to-work transportation.

§ 102–5.95 Is the comfort and/or convenience of an employee considered sufficient justification to authorize home-to-work transportation?

No, the comfort and/or convenience of an employee is not considered sufficient justification to authorize home-to-work transportation.

§ 102–5.100 May we use home-to-work transportation for other than official purposes?

No, you may not use home-to-work transportation for other than official purposes. However, if your agency has prescribed rules for the incidental use of Government vehicles (as provided in 31 U.S.C. note), you may use the vehicle in accordance with those rules in connection with an existing home-to-work authorization.

§ 102–5.105 May others accompany an employee using home-to-work transportation?

Yes, an employee authorized home-to-work transportation may share space in a Government passenger carrier with other individuals, provided that the passenger carrier does not travel additional distances as a result and such sharing is consistent with his/her Federal agency's policy. When a Federal agency establishes its space sharing policy, the Federal agency should consider its potential liability for and to those individuals. Home-to-work transportation does not extend to the employee's spouse, other relatives, or friends unless they travel with the employee from the same point of departure to the same destination, and this use is consistent with the Federal agency's policy.

Subpart C—Documenting and Reporting Determinations

§ 102–5.110 Must we report our determinations outside of our agency?

Yes, you must submit your determinations to the following Congressional Committees:

(a) Chairman, Committee on Governmental Affairs, United States Senate, Suite SD–340, Dirksen Senate Office Building, Washington, DC 20510–6250; and

(b) Chairman, Committee on Governmental Reform, United States House of Representatives, Suite 2157, Rayburn House Office Building, Washington, DC 20515–6143.

§ 102–5.115 When must we report our determinations?

You must report your determinations to Congress no later than 60 calendar days after approval. You may consolidate any subsequent determinations into a single report and submit them quarterly.

§ 102–5.120 What are our responsibilities for documenting use of home-to-work transportation?

Your responsibilities for documenting use of home-to-work transportation are that you must maintain logs or other records necessary to verify that any home-to-work transportation was for official purposes. Each agency may decide the organizational level at which the logs should be maintained and kept. The logs or other records should be easily accessible for audit and should contain:

(a) Name and title of employee (or other identification, if confidential) using the passenger carrier;

(b) Name and title of person authorizing use;

(c) Passenger carrier identification;

(d) Date(s) home-to-work transportation is authorized;

(e) Location of residence;

(f) Duration; and

(g) Circumstances requiring home-to-work transportation.

Note: This document was received at the Office of the Federal Register on September 6, 2000.

Dated: February 14, 2000.

David J. Barram,

Administrator of General Services.

[FR Doc. 00–23250 Filed 9–11–00; 8:45 am]

BILLING CODE 6820–24–P

DEPARTMENT OF DEFENSE

48 CFR Part 209

[DFARS Cases 98–D003, 99–D004, 99–D010]

Defense Federal Acquisition Regulation Supplement; Contract Administration and Audit Services

AGENCY: Department of Defense (DoD).

ACTION: Correction to final rule.

SUMMARY: DoD is issuing a correction to the final rule published at 64 FR 61028 on November 9, 1999, pertaining to contract administration and audit services.

EFFECTIVE DATE: November 9, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

Telephone (703) 602–0311; telefax (703) 602–0350.

SUPPLEMENTARY INFORMATION:

Correction

In the issue of Tuesday, November 9, 1999, on page 61028, in the third column, amendatory instruction 4 is corrected to read as follows:

4. Section 209.106–2 is amended in paragraph (1) in the first sentence by removing the reference and abbreviation ''DLAH 4105.4, DoD'' and adding in their place the words ''the Federal''.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 00–23370 Filed 9–11–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 991220343-0071-02; I.D. 082300C]

Pacific Halibut Fisheries; Oregon Sport Fisheries

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

ACTION: Inseason action.

SUMMARY: NMFS announces changes to the fishing season for the Area 2A sport fisheries off the Oregon coast. This action would transfer quota from the Oregon coast nearshore fishery to the Oregon coast all-depth fishery, and would set an all-depth fishing date for Friday, September 22, 2000.

DATES: Effective September 7, 2000, through December 31, 2000.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier, 206-526-6129.

SUPPLEMENTARY INFORMATION: The Area 2A Catch Sharing Plan (CSP) for Pacific halibut off Washington, Oregon, and California is implemented in the annual management measures for the Pacific halibut fisheries published on March 20, 2000 (65 FR 14909). Those measures organize the Oregon sport fishery for halibut between Cape Falcon and Humbug Mountain into three separate seasons. The first season is a small, incidental season for halibut taken shoreward of the 30-fathom depth contour, and lasts from May 1 through September 30. Halibut are not frequently encountered in nearshore waters, and this first season offers fishers the opportunity to retain incidentally-caught halibut on fishing trips targeting other species. The second season is an all-depth fishery in May, with the season length determined by comparing pre-season estimates of expected catch per day against the halibut quota for that fishery. The third season is an all-depth fishery in August, which harvests the remainder of the all-depth quota not taken in the May fishery.

Before the start of the May 2000 all-depth season, Oregon Department of Fish and Wildlife (ODFW) estimated that the May fishery would take 106,724 lb (48,409 kg) of halibut over a 5-day season, leaving 35,893 lb (16,281 kg) of halibut for the August all-depth fishery. However, weather during the 5-day fishery was unusually pleasant and vessels landed significantly more halibut than had been estimated in preseason projections, 128,573 lb (58,320 kg). As a result of this overage in the May fishery, only 14,044 lb (6,370 kg) of halibut remained for an August fishery from the all-depth quota. Based on past August all-depth fisheries, ODFW had estimated that at least 30,000 lb (13,608 kg) would be needed to hold a single day of all-depth fishing in August. The International Pacific Halibut Commission (IPHC), ODFW, and NMFS met and agreed to cancel the August all-depth fishing opportunity, based on insufficient quota. This fishery had been set preseason for Friday, August 4.

The Area 2A CSP allows inseason changes to sport fishery season dates and other management measures, and includes several provisions for quota transfers. Under the CSP, halibut quota may be transferred from the Oregon central coast nearshore fishery to the all-depth fishery, as long as enough quota remains available to allow nearshore halibut fishing opportunities through September 30. The 2000 quota for the Oregon coast nearshore fishery is 12,324 lb (5,590 kg,) of which ODFW estimates 7,324 lb (3,322 kg) will be needed to maintain the fishery through September 30.

On August 11, 2000, NMFS met via telephone conference call with representatives of ODFW, the Pacific Fishery Management Council (Council), and IPHC to determine whether moving quota from the nearshore fishery to the all-depth fishery would provide enough halibut quota to hold a day of all-depth sport fishing in September. By combining the 14,044 lb (6,370 kg) remaining in the all-depth quota with the 5,000 lb (2,268 kg) available from the nearshore fishery, 19,368 lb (8,785 kg) could be made available to the all-depth fishery. Historically, September all-depth fishing days have had landings levels of about half the level of August all-depth fishing days in the same year. Because the August fishery this year was expected to take about 30,000 lb (13,608 kg) of halibut, managers determined that 19,368 lb (8,785 kg) would be enough halibut to hold a day of all-depth fishing in September. To ensure conservative season structuring, halibut managers further recommended holding the fishery on a week day in late September, when sport fishery participation decreases due to colder weather and the opening of the school year.

Section 24 of the 2000 Pacific halibut regulations provides NMFS with the flexibility to make certain inseason management changes, provided that the action is necessary to allow allocation objectives to be met, and that the action will not result in exceeding the catch limit for the area. The structuring objectives for this subarea are to provide two periods of fishing opportunity in May and in August in productive deeper water areas along the coast, principally for charter boat and larger private boat anglers, and to provide a period of fishing opportunity in the summer for nearshore waters for small boat anglers. While this year's fishing season has met the structuring objective for the nearshore fishery, too much halibut was taken in the May fishery to meet the objective of having a second all-depth season in August. This inseason action would address the lost August opportunity as much as possible by scheduling an all-depth season date in September.

In consultation with the ODFW, the Council, and the IPHC, NMFS has determined that transferring 5,000 lb (2,268 kg) of unneeded quota from the nearshore fishery to the all-depth fishery and scheduling a day of all-depth fishing for Friday, September 22 accommodates the CSP's season structuring objective for the Oregon central coast area without allowing the fishery to exceed its quota.

NMFS Action

For the reasons stated here, NMFS announces the following changes to the 2000 annual management measures (65 FR 14909, March 20, 2000).

1. In section *23. Sport Fishing for Halibut*, paragraphs (4)(b)(v)(A)(1) and (A)(3) are revised to read as follows:

2000 Pacific Halibut Fishery Regulations

23. Sport Fishing for Halibut

* * * * *

(4) * * *

(b) * * *

(v) * * *

(A) * * *

(1) The first season is limited to the area inside the 30-fathom (55 m) curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600. It commences May 1 and continues every day through September 30, or until the combined subquotas of the north central and south central inside 30-fathom fisheries (7,324 lb (3.32 mt)) is estimated to have been taken and the season is closed by the Commission, whichever is earlier.

* * * * *

(3) The third season is open on September 22 to harvest the remainder of the quotas for the all-depth fisheries in the subareas described in paragraphs (v) and (vi) of this section, totaling 142,618 lb (64.7 mt).

* * * * *

2. In section *23. Sport Fishing for Halibut*, paragraphs (4)(b)(vi)(A)(1), and (A)(3) are revised to read as follows:

2000 Pacific Halibut Fishery Regulations

23. Sport Fishing for Halibut

* * * * *

(4) * * *

(b) * * *

(vi) * * *

(A) * * *

(1) The first season is limited to the area inside the 30-fathom (55 m) curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600. It commences May 1 and continues every day through September 30, or until the combined subquotas of the north central and south central inside 30-fathom fisheries (7,324 lb (3.32 mt)) is estimated to have been taken and the season is closed by the Commission, whichever is earlier.

* * * * *

(3) The third season is open on September 22 to harvest the remainder of the quotas for the all-depth fisheries in the subareas described in paragraphs (v) and (vi) of this section, totaling 142,618 lb (64.7 mt).

* * * * *

Classification

This action is authorized by the regulations implementing the Catch Sharing Plan. The determination to take these actions is based on the most recent data available. Because of the need for immediate action to allow fishers access to the Oregon coast halibut quota, and because the public had an opportunity to comment on the CSP that is being implemented and on NMFS' authority to make inseason changes to certain management measures when those measures would further the objectives of the Catch Sharing Plan, NMFS has determined that good cause exists for this document to be published without affording a prior opportunity for public comment or a 30-day delayed effectiveness period. Public comments will be received for a period of 15 days after the effectiveness of this action. This action is authorized by Section 24 of the annual management measures for Pacific halibut fisheries published on March 20, 2000 (65 FR 14909) and has been determined to be not significant for purposes of Executive Order 12866.

Dated: September 5, 2000.

Richard W. Surdi,

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

[FR Doc. 00–23385 Filed 9–7–00; 3:06 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 081600A]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

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

ACTION: Adjustment of General category daily retention limit on previously designated restricted fishing days.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) General category restricted fishing day (RFD) schedule should be adjusted; i.e., certain RFDs should be waived in order to allow for maximum utilization of the General category subquota for the September fishing period. Therefore, NMFS increases the daily retention limit from zero to one large medium or giant BFT on the following previously designated RFDs for 2000: September 10, 11, 17, 18, 24, and 25.

DATES: Effective September 7, 2000.

FOR FURTHER INFORMATION CONTACT: Pat Scida or Brad McHale, 978-281-9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 et seq.) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. General category effort controls (including time-period subquotas and RFDs) are specified annually under 50 CFR 635.23(a) and 635.27(a). The 2000 General category effort controls were specified on July 7, 2000 (65 FR 42883, July 12, 2000).

Adjustment of Daily Retention Limit for Selected Dates

Under 50 CFR 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel to allow for maximum utilization of the quota for BFT. Based on a review of dealer reports, daily landing trends, and the availability of BFT on the fishing grounds, NMFS has determined that adjustment to the RFD schedule, and, therefore, an increase of the daily retention limit for certain previously designated RFDs, is necessary. Therefore, NMFS adjusts the daily retention limit for September 10, 11, 17, 18, 24, and 25, 2000, to one large medium or giant BFT per vessel. NMFS has selected these days in order to give adequate advance notice to fishery participants and NMFS enforcement.

The intent of this adjustment is to allow for maximum utilization of the General category subquotas for the September fishing period (specified under 50 CFR 635.27(a)) by General category participants in order to help achieve optimum yield in the General category fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the HMS FMP. For these same reasons, NMFS has already adjusted the General category daily retention limit for 10 previously scheduled RFDs in July and August (65 FR 46654, July 31, 2000).

While catch rates have continued to be low so far this season, NMFS recognizes that they may increase. In addition, due to the temporal and geographical nature of the fishery, certain gear types and areas are more productive at various times during the fishery. In order to ensure that the September subquota is not filled prematurely and to ensure equitable fishing opportunities in all areas and for all gear types, NMFS has not waived all

the RFDs in September. If catch rates continue to be low, some or all of the remaining previously scheduled RFDs may be waived as well.

Classification

This action is taken under 50 CFR 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: September 6, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–23313 Filed 9–7–00; 8:45 am]

BILLING CODE: 3510–22 –S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 970703166-8209-04; I.D. 060997A]

RIN 0648-AH65

Fisheries of the Exclusive Zone Economic Zone Off Alaska; License Limitation Program; Correction

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

ACTION: Correcting amendments.

SUMMARY: NMFS is correcting a final rule implementing the License Limitation Program (LLP) established for the groundfish fisheries in the Bering Sea and Aleutian Islands management area (BSAI), the groundfish fisheries in the Gulf of Alaska (GOA), and the crab fisheries in the BSAI, that was published in the Federal Register of Thursday, October 1, 1998.

DATES: Effective January 1, 1999.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907-586-7228.

SUPPLEMENTARY INFORMATION: The LLP is a limited access system authorized under section 303(d) of the Magnuson-Stevens Fishery Conservation and Management Act. The LLP is designed to limit the number, size, and operation of vessels that may be used in the affected groundfish and crab fisheries. The North Pacific Fishery Management Council (Council) adopted the LLP in June 1995, and officially submitted it to NMFS in June 1997. A proposed rule to implement the LLP was published on August 15, 1997 (62 FR 43865). The LLP was approved by NMFS on September 12, 1997. A final rule to implement the LLP was published on October 1, 1998 (63 FR 52642). Additional rules to implement an application process and a transfer process for LLP licenses were proposed on April 19, 1999 (64 FR 19113), and published as final on August 6, 1999 (64 FR 42826).

The current regulatory text regarding an eligible applicant for a Norton Sound red or blue king crab license under the LLP does not accurately represent the Council's intent or the FMP amendment text and is inconsistent with regulations governing the LLP application requirements. The word ''and'' between ''1993'' and ''1994'', in the ''eligible applicant'' definition at 50 CFR 679.2, is a drafting error that instead should be ''or''. Currently, the regulation defining an eligible applicant for an LLP license based on participation in the Norton Sound red and blue king crab fisheries at 50 CFR 679.2 reads as follows:

''Eligible applicant means a qualified person who submitted an application during the application period announced by NMFS and . . . who was an individual who held a State of Alaska permit for the Norton Sound king crab summer fishery in 1993 and 1994, and who made at least one harvest of red or blue king crab in the relevant area during the period specified in §679.4(k)(5)(ii)(G), or a corporation that owned or leased a vessel on June 17, 1995, that made at least one harvest of red or blue king crab in the relevant area during the period in §679.4(k)(5)(ii)(G), and that was operated by an individual who was an employee or a temporary contractor; or.''

The reference to § 679.4(k)(5)(ii)(G) specifies the criteria for an area/species endorsement for Norton Sound red and blue king crab on an LLP license. Basically, these criteria include one documented harvest of any amount of red or blue king crab from Norton Sound between January 1, 1993, and December 31, 1994.

This regulatory text appears clear that unless otherwise exempted, to qualify for an LLP license to fish for red or blue king crab in Norton Sound, an individual would have to:

(a) Submit an LLP application during the application period (which ended December 17, 1999);

(b) Have held a State of Alaska permit for the Norton Sound king crab summer fishery in 1993 and 1994; and

(c) Have made one documented harvest of any amount of red or blue king crab from Norton Sound during the same 2-year period, 1993 through 1994.

This regulation is essentially the same as that published in the proposed rule for public comment on August 15, 1997 (62 FR 43866). No comments were received on this eligibility issue in Norton Sound. However, a more fundamental issue is whether the intent of the Council and the LLP implementing regulations on this point are consistent. With respect to crab fisheries, the LLP is authorized by Amendment 5 to the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands. Amendment 5 was approved by the National Marine Fisheries Service on September 12, 1997, and added section 8.1.4.1.1 to the FMP, which reads in part as follows:

License Recipients. Licenses will be issued to current owners (as of June 17, 1995) of qualified vessels, except in the Norton Sound summer red and blue king crab fisheries. License for these fisheries would be issued to:

a. Individuals who held a State of Alaska Permit for the Norton Sound summer king crab fisheries and made at least one landing; or

b. Vessel owners as of June 17, 1995, in instances where a vessel was corporate owned, but operated by a skipper who was a temporary contract employee.

The FMP text, for individuals, shows a strong connection between holding a State permit for, and making at least one landing from, the Norton Sound summer king crab fisheries. The reason that the Council made an exception to the normal vessel ownership requirement for these fisheries is that many of the participants are not vessel owners and fished on the vessels of others, and the Council did not want to exclude any past participant from future participation in these fisheries under the LLP. In addition, the Council was aware that this approach could result in more vessels fishing for king crab in Norton Sound under the LLP, but the entry of new vessels from outside the area was unlikely due to the management of those fisheries by the State of Alaska (State) under a super-exclusive registration system.

The FMP amendment text does not specify a particular time period within which an individual would have to hold a State permit for, and make at least one landing from, the Norton Sound summer king crab fisheries. The Council newsletter dated June 28, 1995, and the preamble to the proposed rule indicate that the Council intended the Norton Sound king crab fisheries to be exempted from the standard general qualification period (GQP) of January 1, 1988, through June 27, 1992, that applies to most other crab fisheries. Instead of the GQP, the Council stipulated a landing requirement during the 2-year period 1993 through 1994. The reason for this is that the State started its super-exclusive registration system in 1993. Hence, when the Council adopted the LLP in June 1995, the period 1993 through 1994

represented the most recent participation history under the super-exclusive system for Norton Sound, and the best snapshot of local or resident involvement in the king crab fisheries in that area.

In summary, the resulting ''eligible applicant'' regulatory text quoted earlier substitutes an individual State permit requirement for the vessel ownership otherwise required for LLP eligibility, and exempts the Norton Sound king crab fishery from the GQP requirements. Instead, an ''eligible applicant'' could receive an LLP license with a Norton Sound red and blue king crab area/species endorsement if the applicant has a minimum of one documented harvest of red or blue king crab in Norton Sound during the 2-year period 1993 through 1994.

Apparently the Council intended to design the LLP to include all of the 1993 and 1994 participants in the Norton Sound summer king crab fisheries. No indication of the same concern for excess fishing capacity exists in these fisheries that the Council had for the other LLP groundfish and crab fisheries. Requiring a minimum of only one documented harvest in the Norton Sound king crab fisheries in either 1993 and 1994, but requiring a State permit in both years would be restrictive (i.e., would qualify fewer LLP participants for the Norton Sound king crab fisheries). Requiring a State permit only for the year in which the minimim landing requirement was satisfied would be less restrictive. In addition, regulations implementing the LLP application process (published August 6, 1999, 64 FR 42826) added § 679.4(k)(6) in which an applicant for a Norton Sound crab species endorsement must contain:

''. . . valid evidence that the applicant was a State of Alaska permit holder for the Norton Sound king crab summer fishery in 1993 or 1994.'' (Emphasis added)

For this reason, the definition for ''eligible applicant,'' subparagraph (3) at § 679.2, is corrected.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: September 7, 2000.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons explained in the preamble, 50 CFR part 679 is corrected by making the following correcting amendment:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C 773 *et seq.*, 1801 *et seq.*, and 3631*et seq.*; Title II of Division C, Pub. L. 105-277; Sec. 3027, Pub. L. 106-31, 113 Stat. 57; 16 U.S.C. 1540(f).

2. In § 679.2, paragraph (3) under the definition for ''Eligible applicant,'' is corrected to read as follows:

§ 679.2 Definitions.

* * * * *

Eligible applicant * * *

* * * * *

(3) Who was an individual who held a State of Alaska permit for the Norton Sound king crab summer fishery at the time he or she made at least one harvest of red or blue king crab in the relevant area during the period specified in § 679.4(k)(5)(ii)(G), or a corporation that owned or leased a vessel on June 17, 1995, that made at least one harvest of red or blue king crab in the relevant area during the period in § 679.4(k)(5)(ii)(G), and that was operated by an individual who was an employee or a temporary contractor; or

* * * * *

[FR Doc. 00–23400 Filed 9–11–00; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 65, No. 177
Tuesday, September 12, 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

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1945

RIN 0560–AF72

Streamlining of the Emergency Farm Loan Program Loan Regulations

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Farm Service Agency (FSA) proposes to amend regulations to streamline the Emergency loan requirements to make them clearer and to reduce administrative burdens on FSA and borrowers.

DATES: Comments on the proposed rule must be received on or before November 13, 2000 to be assured of consideration. Comments on the information collection requirements of this rule must be received on or before November 13, 2000 to be assured of consideration.

ADDRESSES: Submit written comments to the Director, Loan Making Division, Farm Loan Programs, Farm Service Agency, United States Department of Agriculture, STOP 0522, 1400 Independence Avenue, SW, Washington, DC 20250–0522.

FOR FURTHER INFORMATION CONTACT: Mike Hinton, Branch Chief, Loan Making Division, Farm Loan Programs, Farm Service Agency, United States Department of Agriculture, STOP 0522, 1400 Independence Avenue, SW, Washington, DC 20250–0522 telephone (202) 720–1632; or e-mail: mike_hinton@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G. It has been determined that this action does not affect the quality of human environment. Therefore, an Environmental Impact Statement is not required.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, civil justice reform. All State and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule. It will not affect agreements entered into prior to the effective date of the rule. The administrative appeal provisions published at 7 CFR parts 11 and 780 must be exhausted before bringing any action for judicial review.

Executive Order 12372

The programs within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983).

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) established requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. This rule contains no Federal mandates, as defined in Title II of the UMRA, for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act of 1995

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection and recordkeeping requirements included in the proposed rule have been submitted for approval to OMB.

Title: Emergency Loans.

OMB Control Number: 0560–0159.

Expiration Date: March 31, 2001.

Abstract: The information collected under this rule is needed for FSA to effectively make and service Emergency loans. The reporting requirements imposed by the proposed rule are necessary to administer Emergency loans in accordance with statutory requirements of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*) consistent with commonly performed lending practices.

In order to apply for an Emergency loan, the applicant must provide information regarding the farming operation, financial condition, ability to obtain other credit, plans for how it intends to repay the loan, and loan security. If the borrower seeks loan servicing, the borrower must provide information regarding the financial condition of the borrower.

The purpose of the proposed rule is to streamline the requirements for making an Emergency loan to enable FSA to more rapidly and efficiently make Emergency loans to qualified applicants.

Type of Request: Revision and Extension of a Currently Approved Information Collection Package.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.94 hours per loan application.

Respondents: Farmers and ranchers: 4,664.

Estimated Number of Respondents: 6,895.

Estimated Number of Responses per Respondent: 2.34.

Estimated Total Annual Burden on Respondents: 13,714 hours.

Comments are solicited on the proposed information collection and recordkeeping to assist FSA to: (a) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) evaluate the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used; (c) enhance the quality, utility and clarity of the information to be collected; and (d) 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.

Comments regarding this information collection should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Mike Hinton, Branch Chief, Loan Making Division, Farm Loan Programs, Farm Service Agency, United States Department of Agriculture, STOP 0522, 1400 Independence Avenue, SW, Washington, DC 20250–0522. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of the proposed rule. Comments regarding paperwork burden will be summarized and included in the request for OMB approval of the information collection. All comments will also become a matter of public record.

Federal Assistance Programs

These changes affect the following FSA program as listed in the Catalog of Federal Domestic Assistance under No. 10.404—Emergency Loans.

Background

The current Emergency loan program has been in effect since 1978. There have been numerous changes to the program in subsequent years. The Agency has reviewed the current regulations and determined that they should be streamlined to reduce the burden on the applicant. Recent statutory changes also have required revisions to the regulations to ensure that they reflect statutory requirements.

The proposed rule will revise the documentation requirement of the credit elsewhere test to reduce the burden of this requirement on applicants in accordance with section 322 of the Consolidated Farm and Rural Development Act (Act) (7 U.S.C. 1962). The current regulations contain requirements regarding obtaining written rejections of credit from the local community that exceed those required by the Act. Under the proposed rule, these requirements have been reduced to more accurately reflect the minimum requirements of the Act and to focus these requirements on applications for larger loans and from applicants with substantial net worth. This proposed rule provides that in the case of loans in excess of $300,000 where the applicant's net worth is in excess of $1,000,000, the applicant must obtain three written declinations of credit and at least one of which must be from a lender outside the normal trade area of the applicant. The purpose for requiring a declination of credit outside the normal trade area is to ensure that an applicant with a substantial net worth seeking a large loan has made the fullest effort to obtain credit from another source within the reasonable proximity. For the remaining applicants, the requirements for obtaining written declinations of credit have been reduced to two in the case of loans in excess of $300,000 and to one in the case of loans less than $300,000. The proposed rule also will add a provision that permits waiver of the documentation of credit elsewhere when the loan is for less than $100,000, if the Agency determines this requirement would pose an undue burden on the applicant and credit is not likely to be available based on the applicant's circumstances.

The proposed rule also will simplify the process for calculating qualifying production losses for which an applicant may seek an Emergency loan. The current regulation has a very complex set of formulas for determining qualifying production losses. As a result, the current process consumes substantial amounts of time for FSA and the applicant before FSA can determine if the applicant is eligible and, if eligible, how much may be borrowed. The Agency proposes to calculate the eligible production loss as the difference between the production level for the disaster year and the production history for the crops on the farm. The production history for the farm will be based on crop insurance and FSA data. In cases where sufficient production history is not available, the 3 year county production average for the crop will be used. In addition, in order to provide more assistance to borrowers, the proposed rule will exercise FSA discretion in section 329 of the Act (7 U.S.C. 1970) to increase the loan level for production loss Emergency loans from 80 percent to 100 percent of the eligible production loss.

The proposed rule provides that a borrower may use the proceeds of a production loss Emergency loan for the purposes of replacing working capital lost as a result of the disaster. In the current regulation, replacement of working capital is not a specifically stated authorized use of loan funds. Over the years, however, FSA has determined that in responding to a disaster a borrower not only may experience a loss in production of the crop, but also may have to devote working capital set aside for the production of crops for other purposes in response to the disaster. Section 323 of the Act (7 U.S.C. 1963) provides that Emergency loans can be used for the same purposes as operating and real estate loans. Section 312 (a)(10) of the Act (7 U.S.C. 1942 (a)(10)), in turn, provides that operating loans may be used for ''other farm, ranch, or home needs''. The proposed rule clarifies that production loss Emergency loans may be used for other farm, ranch, or home needs, including but not limited to the replacement of working capital lost.

Under the proposed rule, livestock losses will be treated as a physical loss instead of a production loss as under the current rule. This change will simplify the loss calculation for livestock by allowing FSA to value the livestock lost instead of attempting to apply a production formula which is more applicable to crop production than to the production of livestock. This change also will remove livestock and livestock products losses from the requirement that they must reach a 30 percent yield loss threshold as required for all production losses. This change is based on the conclusion that yield loss thresholds are not readily determinable or relevant in the livestock context. Therefore, FSA has determined to simply use the loss of livestock or production itself as the basis for determining the loss for loan eligibility purposes.

The proposed rule will make a conforming change to the use of loan proceeds in the case of farming operations that have suffered a physical loss of livestock. The proposed rule will allow the borrower to pay essential family household expenses from the proceeds of a physical loss Emergency loan. Under the current rule, livestock operations are able to pay essential family household expenses from loan proceeds because the losses are treated

as production losses. The proposed rule will retain the ability for those with production loss loans to use loan proceeds for essential family household expenses; however, under the proposed rule, since livestock and livestock product losses are treated as physical losses, a change was needed to allow such livestock operations to use physical loss loan proceeds to pay essential family household expenses.

The proposed rule will specifically allow the costs of restoring perennials the produce an agricultural commodity to their pre-disaster condition as an eligible purpose for physical loss loans for the losses to chattel. Exhibit D to 7 CFR part 1945, subpart D, currently provides that such loans may be used to pay the costs for restoring or rehabilitating damaged citrus trees over a period of up to five years. Section 1945.163 (b) further provides that actual physical loss from income producing trees includes the cost of reestablishing the trees; such loss from trees grown for timber is based on the value of the trees at the time of the disaster less their salvage value, and such loss to growing crops or pasture is the cost of reestablishing the crops or pasture. After replacing such perennials after a disaster, the borrower may incur additional costs for several years until the perennials are able to produce agricultural commodities. Therefore, the proposed rule clearly states that the proceeds of physical loss loans for chattels may be used to pay costs necessary to restore perennials which were damaged by the disaster and that produce agricultural commodities.

The proposed rule will modify the requirements regarding security for Emergency loans. Section 802 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act, 1999, amended section 324(d) of the Act to prohibit FSA from rejecting an Emergency loan applicant because the applicant failed to pledge a particular amount of collateral, if FSA is reasonably certain the applicant can repay the loan. However, section 324(d) also allows FSA to require the applicant to pledge available collateral as security for the loan.

Therefore, the proposed rule will eliminate the requirement that an Emergency loan must be secured by a particular amount of collateral. The proposed rule will require the applicant to demonstrate an ability to repay the loan on an on-going operational basis, excluding special one-time sources of income or expenses. Because the ability to repay is a method for determining whether the loan will be repaid, the proposed rule has tightened the requirements concerning the farm plan supporting the loan application. This determination will be based on a farm plan which must indicate the loan will be repaid based upon the applicant's production and income history. The plan must also indicate how pricing risks will be addressed through the use of marketing contracts, hedging, options, or revenue insurance and include a marketing plan or similar risk management practice. Further, the applicant must demonstrate that it has had positive net cash income in at least 1 of the immediately preceding 5 years. The proposed rule also will provide that if the applicant is using the applicant's ability to repay the loan as security, FSA shall require that the applicant pledge all available assets (including personal assets for both individuals and members of entities).

The proposed rule will include changes regarding the insurance requirements to protect FSA's interests in loan security. The proposed rule will retain the current requirement that a borrower must obtain at least catastrophic risk protection of crop insurance or waive future emergency crop loss assistance for each crop that is a basic part of an applicant's total farming operation, if available, in writing. However, the proposed rule will add an exception that a borrower must obtain crop insurance on all growing crops used to provide adequate security, if available as determined by the Agency. This additional insurance requirement is being imposed to provide further protection for FSA with respect to growing crops being used to meet adequate security requirements. For all types of insurance required for an Emergency loan, the proposed rule also requires the borrower to list FSA as loss payee for the insurance indemnity payment or as a beneficiary of a mortgage loss payable clause. This change will ensure that FSA is able to obtain the portion of such insurance proceeds that represented security for the loan if an insurance indemnity is paid. The proposed rule will require that in the case of crop insurance, the borrower must execute an assignment of indemnity in favor of FSA. Such an assignment will also ensure that FSA will be able to collect the portion of such indemnity payments in which it has an interest.

The proposed rule also will eliminate the limitations on the amount given to the applicant at loan closing for essential family household expenses. Instead of limiting the amount the borrower may use for this purpose to a set amount, the proposed rule will allow FSA to be more flexible in determining the amount needed by the individual applicant for essential family household expenses during the farm plan period. Under this change, the farm plan will need to indicate that part of the loan proceeds will be used for essential family household expenses.

The proposed rule will provide more flexibility in the requirements regarding an applicant whose operation changed between the time that the disaster took place and the time the loan application is submitted. Under the current rule, the changed farming operation cannot be larger than the farming operation that existed at the time of the disaster. The proposed rule will allow a farming operation to increase in size, however, the loan amount will reflect the percentage of the former farming operation in the new operation and in no case can the loan amount exceed the amount the former operation would have been eligible to receive. To further simplify this process, the proposed rule also will remove the formula for adjusting the loan amount for the new farming operation based on the changes in ownership from the former farming operation.

The proposed rule will retain two eligibility requirements from the previous regulation regarding managerial ability and honest endeavor. Prior to amendments made to the Act by the Department of Agriculture Reorganization Act of 1994 (1994 Act) (Pub. L. 103–354), these requirements were statutory eligibility requirements. Even though these statutory requirements were eliminated by section 227 of the 1994 Act, FSA has retained them administratively as requirements of the Emergency loan program. The basis for retaining these provisions stems from the determination that these requirements give FSA critical information in determining whether an applicant will be able to repay the loan and meet all other conditions of the loan. Managerial ability of the applicant is a critical element in determining whether the applicant will be able to successfully manage the operation to generate sufficient revenue to repay the loan. The requirement of honestly endeavoring to carry out the conditions of the loan is a critical element in determining whether an applicant will repay the loan and meet all other loan conditions. The requirement assures that applicants will completely and truthfully represent their farming operation for the purpose of determining loan eligibility. The requirement also assures that the borrower will operate the farming operation in a manner consistent with

Emergency loan purposes and will not unnecessarily jeopardize FSA's security interests. With respect to this requirement, the proposed rule will provide FSA with the authority to consider whether the applicant has properly fulfilled its obligations with other parties including other Federal Agencies in good faith. This provision is not intended to address situations beyond the applicant's control or isolated and inadvertent mistakes made by the applicant. FSA believes that an examination of such information will give it more critical information about the applicant to determine whether the applicant will operate the farming operation in a manner consistent with the requirements of the loan.

FSA also proposes to add the eligibility requirement that an applicant's property must not be subject to a Federal judgement lien. This amendment is required by Federal debt collection procedure, 28 U.S.C. 3201(e). Until such judgment is paid in full or otherwise satisfied, the debtor is not eligible for any Federal loan or grant assistance under this provision.

The proposed rule also will amend the Emergency loan regulations to reflect the consolidation of the Farm Loan Program portions of the former Farmers Home Administration with the Agricultural Stabilization and Conservation Service into FSA pursuant to the Department of Agriculture Reorganization Act of 1994. FSA further will amend the current regulation to add, for clarity, definitions of the following terms: ''Act,'' ''agricultural commodity,'' ''allowable costs,'' ''applicant,'' ''chattel,'' ''chattel or real estate essential to the farming operation,'' ''debt forgiveness,'' ''disaster,'' ''disaster area,'' ''disaster yield,'' ''essential family household expenses,'' ''entity,'' ''Farm Loan Program loan,'' ''farmer,'' ''livestock,'' ''non-essential assets,'' ''normal production yield,'' ''owner,'' ''physical losses,'' ''security value,'' and ''trust.''

In addition to these changes, the proposed rule generally will eliminate provisions in the current regulations that address certain administrative functions of FSA, the details of which do not directly affect loan making decisions or administrative burdens of the applicant.

List of Subjects in 7 CFR Part 1945

Agriculture, Credit, Disaster assistance, Loan programs—Agriculture.

Accordingly, 7 CFR part 1945 is proposed to be amended as follows:

PART 1945—EMERGENCY

1. The authority citation for part 1945 continues to read as follows.

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1980.

2. Add subpart B to read as follows:

Subpart B—Emergency Loans

Sec.

1945.51 Purpose.
1945.52 Definitions.
1945.53 Emergency loan funds uses.
1945.54 Eligibility requirements.
1945.55 Limitations.
1945.56 Interest rate.
1945.57 Loan terms.
1945.58 Repayment and Security requirements.
1945.59 Appraisal and valuation requirements.
1945.60 Insurance for loan security.
1945.61 Charges and fees.

Subpart B—Emergency Loans

§ 1945.51 Purpose.

The purpose of the Emergency Loan Program is to provide financial assistance to family farmers that have suffered losses as the result of a disaster so that they can return to normal farming operations as soon as possible after the disaster. Specifically, this subpart describes the policies and procedures of the Agency for making Emergency loans to operators of such farms.

§ 1945.52 Definitions.

Act means the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*).

Additional security means any real estate or chattel that provides security in excess of the amount of security value equal to the loan amount, excluding security described in § 1945.58(g).

Adequate security means any real estate and chattel that is required to provide a security value at least equal to the loan amount.

Agency means the Farm Service Agency, including its employees, State and area committee members, and any successor agency.

Agricultural commodity means livestock, grains, cotton, oilseeds, dry beans, tobacco, peanuts, sugar beets, sugar cane, fruit, vegetable, forage, tree farming, nursery crops, nuts, aquacultural species, and other agricultural commodities as determined by the Agency.

Allowable costs means those costs for replacement or repair that are supported by acceptable documentation, including but not limited to written estimates, invoices, and bills.

Applicant means an individual or entity (including each owner of the entity unless the context requires otherwise) operating a farming operation at the time of the disaster, who is requesting assistance from the Agency under this subpart. All requirements of applicants apply to owners of the entity individually and collectively unless the context clearly requires otherwise.

Aquacultural species means aquatic organisms (including fish, mollusks, crustaceans or other invertebrates, amphibians, reptiles, or aquatic plants) raised in a controlled or selected environment which the applicant has exclusive rights to use.

Basic part of an applicant's total farming operation means an agricultural commodity production enterprise of an applicant's farming operation which normally generates sufficient income to be considered essential to the success of such farming operation.

Borrower means an individual or entity which has an outstanding obligation to the Agency under any Farm Loan Program loan, without regard to whether the loan has been accelerated. A borrower includes all parties liable for such obligation owed to the Agency, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed, sold, or conveyed; or who have been discharged of all such obligations owed to the Agency.

Chattel means any property that is not real estate.

Chattel or real estate essential to the farming operation means chattel or real estate that would be necessary for the applicant to continue operating the farm after the disaster in a manner similar to the manner in which the farm was operated immediately prior to the disaster, as determined by the Agency.

Corporation means a private domestic entity recognized as a corporation and authorized as a corporation under the laws of the State or States in which the entity does business.

County means a local administrative subdivision of a State or similar political subdivision of the United States.

Debt forgiveness means reducing or terminating a debt under the Act in a manner that results in a loss to the Agency (excluding a consolidation, rescheduling, reamortization, or deferral), through:

(1) Writing down or writing off a debt pursuant to 7 U.S.C. 2001;

(2) Compromising, adjusting, reducing, or charging off a debt or claim pursuant to 7 U.S.C. 1981; or

(3) Paying a loss pursuant to 7 U.S.C. 2005 on a Farm Loan Program loan guaranteed by the Agency.

Disaster means an event of unusual and adverse weather conditions or other natural phenomena that has substantially affected producers of agricultural commodities by causing physical property or production losses in a county, or similar political subdivision, that triggered the inclusion of such county or political subdivision in the disaster area pursuant to subpart A of this part.

Disaster area means the county(ies) , declared/designated as a disaster area for Emergency loan assistance as a result of disaster related losses. This includes counties named as contiguous to those counties declared/designated as disaster areas.

Disaster yield means the per acre yield of an agricultural commodity on the farming operation during the production period when the disaster occurred.

Essential family household expenses means the expenses associated with providing food, clothing, and shelter necessary to maintain the borrower and the immediate family of the borrower.

Established farmer means a farmer who is an operator of the farming operation (in the case of a farming operation operated by an entity, its owners as a group) who:

(1) Actively participated in the operation and the management, including but not limited to, exercising control over, making decisions regarding, and establishing the direction of, the farming operation at the time of the disaster;

(2) Spends a substantial portion of time in carrying out the farming operation;

(3) Planted the crop, or purchased or produced the livestock on the farming operation;

(4) In the case of an entity, is primarily engaged in farming and has over 50 percent of its gross income from all sources from its farming operation based on the farming operation's projected cash flow for the next crop year or the next 12 month period, as mutually determined; and

(5) Is not:

(i) A corporation with a majority interest held by one or more estates, trusts, other corporations, partnerships, or joint operations;

(ii) A partnership or joint operation with a majority interest held by an estate, trust, corporation, another partnership or another joint operation; or

(iii) An integrated livestock, poultry, or fish processor who operates primarily and directly as a commercial business through contracts or business arrangements with farmers, except a grower under contract with an integrator or processor may be considered an established farmer, provided the operation is not managed by an outside full-time manager or management service and such loans shall be based on the applicant's share of the agricultural production as set forth in the contract.

Entity means a partnership, corporation, cooperative or joint operation that is an operator of an operation engaged in farming, ranching, or aquaculture activities at the time the disaster occurs.

Family farm means family farm as defined in § 1941.4 of this chapter.

Farm Loan Program loan means a Farm Ownership loan, Operating loan, Emergency loan, Soil and Water loan, or Economic Emergency loan made or guaranteed by the Agency pursuant to the Act.

Farmer means individuals, cooperatives, corporations, partnerships or joint operations who are farmers, ranchers, or aquaculture operators actively engaged in their operation at the time a disaster occurs.

Feasible plan means feasible plan as defined in § 1943.4.

Household contents means the essential household items necessary to maintain viable living quarters such as: stove, refrigerator, furnace, couch, chairs, tables, beds, lamps, clothes, etc. The term excludes all luxury items including jewelry, furs, antiques, paintings, etc.

Hazard insurance means coverage against losses due to fire, windstorm, lightning, hail, explosion, business interruption, riot, civil commotion, aircraft, land vehicles, marine vehicles, smoke, builders risk, public liability, property damage, flood or mudslide, workman's compensation, or any similar insurance that is available and needed to protect the security, or which is required by law.

Livestock means a member of the animal kingdom, or product thereof, as determined by the Agency.

Majority interest means an ownership interest of 50 percent or more of the entity.

Non-essential asset means non-essential asset as defined in § 1951.906 of this chapter.

Nonfarm enterprise means nonfarm enterprise as defined in § 1941.4 of this chapter.

Normal production yield means:

(1) The per acre actual production history of the crops produced by the farming operation determined pursuant to the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*) and part 400, subpart G of this title for the production year during which the disaster occurred;

(2) When the actual production history is not available and the operator has been a Farm Loan Program borrower with respect to that farming operation for the 3 years prior to the year of the disaster the prior 3 year average per acre yield for the crops will be determined using the Agency Farm Loan Program production records for the farming operation when such records are available and the disaster yield for the years when such records are not available; or

(3) When the actual production history for the farming operation is not available and the operator has not been a Farm Loan Program borrower for the prior 3 years, the per acre average of the county average production for the crops for the 3 years prior to the production year during which the disaster occurred.

Owner means those persons with an interest in the entity as a stockholder, partner, member, or joint operator.

Physical loss means damage or destruction with respect to real estate or chattel, excluding annual growing crops.

Production loss means damage or destruction with respect to annual growing crops.

Security value means the value of real estate or chattels (less the value of any prior liens) used as security for a loan under this subpart as of the date of the closing of the loan.

Trust means an organization that under applicable State law meets the criteria of being a trust of any kind, but excluding trusts that under applicable State law also meet the criteria of being a farm cooperative, private domestic corporation, partnership, or joint operation.

United States means each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Working capital means cash available to conduct normal daily farming or ranching operations including but not limited to feed, seed, fertilizer, pesticides, farm or ranch supplies, cooperative stock, and cash rent.

§ 1945.53 Emergency loan funds uses.

(a) *Physical losses.*

(1) *Real estate losses.* Emergency loans may be used to address the needs of the farming operation associated with physical losses of real estate that were the result of a disaster to:

(i) Acquire or enlarge the farm, as specified in § 1943.16(a) of this chapter,

as long such acquisition or enlargement does not cause the farm to exceed the requirements for a family farm;

(ii) Make capital improvements to the family farm, as specified in § 1943.16(b) of this chapter;

(iii) Pay for activities to promote soil and water conservation and protection on the family farm as specified in § 1943.16(c) of this chapter;

(iv) Pay loan closing costs related to acquiring, enlarging, or improving the family farm as specified in § 1943.16(d) of this chapter that an applicant cannot pay from other sources;

(v) Replace land or water resources on the family farm which resources cannot be restored;

(vi) Pay costs associated with land and water development for conservation or use purposes;

(vii) Establish a new site for farm dwelling and service buildings outside of a flood or mudslide area; and

(viii) Replace land from the family farm that was sold or conveyed, if such land is necessary for the farming operation to be effective.

(2) *Chattel losses.* Emergency loans may be used to address the needs of the farming operation associated with the physical losses of chattel that were the result of a disaster to:

(i) Purchase livestock and farm equipment, including but not limited to quotas, and cooperative stock for credit, production, processing, or marketing purposes;

(ii) Pay customary costs associated with obtaining, planning, and closing a loan that an applicant cannot pay from other sources (e.g. fees for legal, architectural, and other technical services, but not fees for agricultural management consultation and preparation of Agency forms);

(iii) Repair or replace essential household contents damaged in the disaster;

(iv) Pay the costs to restore perennials, which produce an agricultural commodity, to the stage of development the damaged perennials had obtained prior to the disaster;

(v) In the case of a farming operation that has suffered livestock losses, pay essential family household expenses; and

(vi) Refinance a loan (in the case of a Farm Loan Program loan debt as long as the applicant has not refinanced the loan more than 4 times).

(b) *Production losses.* Emergency loans may be used to address the losses of the farming operation associated with production of agricultural commodities (except the losses associated with the loss of livestock) of the farming operation that were the result of a disaster to:

(1) Pay costs associated with reorganizing the family farm to improve its profitability;

(2) Pay annual operating expenses, which includes, but is not limited to, feed, seed, fertilizer, pesticides, farm or ranch supplies, cooperative stock, and cash rent;

(3) Pay costs associated with Federal or State-approved standards under the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 667) if the applicant can show that compliance with the standards will cause substantial economic injury;

(4) Pay training costs required or recommended by the Agency;

(5) Pay essential family household expenses;

(6) Refinance a debt (in the case Farm Loan Program loan debt as long as the applicant has not refinanced the loan more than 4 times); and

(7) Replace lost working capital.

§ 1945.54 Eligibility requirements.

(a) *General borrower eligibility requirements.* To be eligible for an Emergency loan:

(1) *Legal capacity.* An applicant must have the legal capacity to incur the obligation of the loan.

(2) *Citizenship.*

(i) *Applicant that is an individual.* The individual applicant must be a citizen of the United States or an alien lawfully admitted to the United States for permanent residence as determined by the U.S. Immigration and Naturalization Service.

(ii) *Applicant that is an entity.* If the applicant is an entity, the majority interest of the applicant must be held by individuals who are citizens of the United States or aliens lawfully admitted to the United States for permanent residence, as determined by the U.S. Immigration and Naturalization Service.

(3) *Family farm and nonfarm enterprise.* The applicant's farming operation must qualify as a family farm and must not be a nonfarm enterprise.

(4) *Established farmer.* An applicant must be an established farmer.

(5) *Owner and operator requirements.*

(i) *Loans for physical losses to real estate.* In the case of a loan for a purpose specified in § 1945.53(a)(1), an applicant must be:

(A) the owner and operator of the farming operation; or

(B) an operator of the farming operation whose lease on the affected real estate would exceed the term of the loan and give the Agency prior notification of the termination of the lease during the term of the loan, and whose lessor would give the Agency a mortgage on the real estate as security for the loan.

(ii) *Loans for physical losses to chattel.* In the case of a loan for a purpose specified in § 1945.53(a)(2), an applicant must be the operator of the farming operation.

(iii) *Loans for production losses.* In the case of a loan for a purpose specified in § 1945.53(b), an applicant must be the operator of the farming operation.

(6) For entity applicants:

(i) If the owners holding a majority interest in the entity applicant are related by blood or marriage, at least one of such related owners must operate the family farm.

(ii) If the owners holding a majority interest in the entity applicant are not related by blood or marriage, the majority interest holders must all operate the family farm.

(iii) If the entity applicant has an operator interest in any other farming operation, that farming operation must not be larger than a family farm.

(7) *Intent to continue farming.* An applicant must demonstrate the intent to continue the farm operation after the disaster.

(8) *Credit history.* The applicant must demonstrate a credit history satisfactory to the Agency. The Agency may use credit reports or any other available information to make this determination.

(9) *Availability of credit elsewhere.* An applicant must be unable to obtain sufficient credit elsewhere at reasonable rates and terms. To establish this, the applicant must obtain written declinations of credit from legally organized commercial lending institutions within reasonable proximity of the applicant that specify the reasons for the declination as follows:

(i) In the case of a loan in excess of $300,000 and the net worth of the applicant is $1,000,000 or greater, three written declinations of credit, one of which is from a lender outside the normal trade area of the applicant, are required;

(ii) In the case of a loan in excess of $300,000 and the net worth of the applicant is less than $1,000,000, two written declinations of credit are required;

(iii) In the case of a loan of $300,000 or less, one written declination of credit is required; and

(iv) In the case of a loan of $100,000 or less, the Agency may waive the requirement for obtaining a written declination of credit, if the Agency determines that it would pose an undue burden on the applicant, the applicant certifies that they cannot get credit

elsewhere, and based on the applicant's circumstances credit it not likely to be available.

(10) *Prior debt forgiveness.* An applicant must not have received debt forgiveness from the Agency on more than one occasion before April 4, 1996, or any time on or after April 4, 1996.

(11) *Federal judgement lien.* An applicant's property must not be subject to a Federal judgement lien.

(12) *Managerial ability.* An applicant must have sufficient managerial ability to assure reasonable prospects of loan repayment, as determined by the Agency. The applicant must demonstrate this managerial ability by education, on-the-job training, or farming experience within the last 5 years that covers an entire production cycle.

(13) *Borrower training.* The applicant must agree to meet the borrower training requirements in accordance with § 1924.74 of this chapter.

(14) *Prior drug convictions.* An applicant cannot have been convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance, as defined in part 1308 of title 21 during the current crop year or the previous 4 crop years.

(15) *Honestly endeavor.* The applicant must demonstrate to the Agency that the applicant will honestly endeavor to carry out the conditions of the loan. The Agency will determine whether the applicant will make a sincere effort to repay the loan, devote the effort required to carry out the terms and conditions of the loan, and deal with the Agency in good faith. This includes the applicant providing current, complete, and truthful information when applying for assistance. In making this determination, the Agency may examine whether the applicant has properly fulfilled its obligations to other parties, including other agencies of the Federal Government.

(b) *Additional Emergency loan eligibility requirements.*

(1) *Timely loan application.* A loan application must be received by the Agency not later than 8 months after the date the disaster is declared or designated in the county of the applicant's farming operation.

(2) *Qualifying losses.*

(i) *Loss must occur in a disaster area.* An applicant may seek an Emergency loan only with respect to a family farm that had production or physical losses as a result of a disaster in a disaster area.

(ii) *Eligible production loss.* For production loss loans, an applicant must have a disaster yield that is at least 30 percent below the normal production yield of the crop, as determined by the Agency, that comprises a basic part of an applicant's total farming operation.

(iii) *Eligible physical loss.* For physical loss loans, an applicant must have suffered disaster-related damage to chattel or real estate essential to the farming operation, or to household items that must be repaired or replaced.

(3) *Changes in ownership structure.* The ownership structure of a family farm may change between the time of a qualifying loss and the time an Emergency loan is closed. In such case, all of the following requirements must be met:

(i) The applicant, in its new form, including all owners must meet all applicable eligibility requirements contained in this section;

(ii) The new individual applicant, or all owners of a new entity applicant must have had an ownership interest in the farming operation at the time of the disaster; and

(iii) The amount of the loan will be based on the percentage of the former farming operation transferred to the new applicant and in no event will the individual portions aggregated equal more than would have been authorized for the former farming operation.

(4) *Requirement of insurance.* Emergency loan funds may not be used for physical loss purposes (excluding losses to livestock) unless that physical property was covered by general hazard insurance at the time that the damage caused by the natural disaster occurred. The level of the coverage in effect at the time of the disaster must have been the tax or cost depreciated value, whichever is less. Chattel property must have been covered at the tax or cost depreciated value, whichever is less, when such insurance was readily available and the benefit of the coverage (the lesser of the property's tax or cost depreciated value) was greater than the cost of the insurance.

§ 1945.55 Limitations.

(a) *General limitations.*

(1) *Highly erodible soil and wetlands conservation.* The Agency will not make a loan under this subpart for any purpose that contributes to erosion of highly erodible land or the conversion of wetlands to produce an agricultural commodity.

(2) *Construction.* Any construction financed by the Agency must comply with applicable Federal, State, local, and industry building standards.

(b) *Restriction on loan amount.* An Emergency loan may not exceed the lesser of:

(1) The amount of credit necessary to restore the family farming operation to its pre-disaster condition;

(2) In the case of a physical loss loan, the total eligible physical losses caused by the disaster; or

(3) In the case of a production loss loan, 100 percent of the total actual production loss sustained by the applicant calculated pursuant to paragraph (d) of this section.

(c) *Maximum cumulative loan principal.* The maximum cumulative Emergency loan principal that any individual, entity, or owner of an entity may have outstanding is $500,000.

(d) *Production losses.* The applicant's actual production loss with respect to a crop is calculated as follows:

(1) Subtract the applicant's disaster yield from the applicant's normal production yield to determine the applicant's per acre production loss;

(2) Multiply the applicant's per acre production loss by the number of acres of the farming operation devoted to the crop to determine the volume of the production loss;

(3) Multiply the volume of the applicant's production loss by the market price for such crop as determined by the Agency to determine the dollar value for the production loss; and

(4) Subtract any other disaster related compensation received by the applicant for the production loss.

(e) *Physical loss.*

(1) *Amount of loss.* The applicant's total eligible physical losses is calculated as follows:

(i) Add the allowable costs associated with replacing or repairing chattel covered by hazard insurance (excluding labor, machinery, equipment, or materials contributed by the applicant to repair or replace chattel);

(ii) Add the allowable costs associated with repairing or replacing real estate, covered by hazard insurance;

(iii) Add the value of replacement livestock (such valuation will be based on a national or regional valuation of species or product classification whichever the Agency determines is more accurate);

(iv) Add the allowable costs to restore perennials, which produce an agricultural commodity, to the stage of development the damaged perennials had obtained prior to the disaster;

(v) Add, in the case of an applicant that is an individual, the allowable costs associated with repairing or replacing essential household contents, not to exceed $20,000; and

(vi) Subtract any other disaster related compensation or insurance indemnities received by the applicant for the loss or damage to the chattel or real estate.

(2) *Documentation.* In the case of physical losses associated with livestock, the applicant must have written documentation of the inventory of livestock and records of livestock product sales sufficient to allow the Agency to value such livestock or livestock products just prior to the loss.

§ 1945.56 Interest rate.

The interest rate applicable for an Emergency loan will be the lower of the interest rate at the time of either loan approval or loan closing and in no event shall exceed 8 percent annually.

§ 1945.57 Loan terms.

(a) *Basis for repayment.* The Agency schedules repayment of Emergency loans based on the useful life of the loan security, the applicant's repayment ability, and the type of loss.

(b) *Minimum payment requirement.* The repayment schedule must include at least one payment every year.

(c) *Repayment of loans for annual operating expenses.* Emergency loans for annual operating expenses must be repaid within 12 months, except the Agency may extend this term to not more than 18 months to accommodate the production cycle of the agricultural commodities of the farming operation.

(d) *Repayment of loans for production or physical losses to chattel.* The repayment schedule for loans for production losses or physical losses to chattel (including but not limited to assets with an expected life between 1 and 7 years) may not exceed 7 years. If necessary to improve the repayment ability of the loan and real estate security is available, the term of the loan may be extended up to a total length not to exceed 20 years.

(e) *Repayment of loans for physical losses to real estate.* The repayment schedule for loans for physical losses to real estate is based on repayment ability of the applicant and the useful life of the security, but in no case will the term of repayment exceed 40 years.

§ 1945.58 Repayment and security requirements.

(a) *General requirements*

(1) *Ability to repay.* The applicant must submit a feasible plan that demonstrates the applicant's ability to repay the loan. The plan must demonstrate that the applicant will meet all other credit needs.

(2) *Sufficient equity.* An applicant must have sufficient equity in the security pledged for an Emergency loan to provide adequate security for the loan except as permitted in paragraph (h) of this section. The applicant must provide additional security, if available, not to exceed 150 percent of the loan amount.

(3) *Interests in property not owned by the applicant.* Interests in property not owned by the applicant (such as leases that provide a mortgageable value, water rights, easements, mineral rights, and royalties) can be offered as security for the loan and will be considered in determining whether adequate security is available.

(b) *Real estate loans.* In the case of an Emergency loan for real estate purposes, the loan shall be secured at a minimum by the real estate that is being purchased, repaired, replaced, refinanced, or improved with the loan funds.

(c) *Chattel and production loans.* In the case of an Emergency loan for chattel purposes (including production purposes), the loan shall be secured, at a minimum, by the chattel that is being purchased, repaired, replaced, refinanced, or produced with the loan funds.

(d) *Agency lien position*

(1) *Real estate security.* If real estate is pledged as security for a loan, the Agency must obtain a first lien, if available, on the real estate. When a first lien is not available, the Agency may take a junior lien under the following conditions:

(i) The prior lien does not contain any provision that may jeopardize the Agency's interest or the applicant's ability to repay the loan to the Agency;

(ii) Prior lienholders agree to notify the Agency of acceleration and foreclosure whenever State law or other arrangements do not require such notice; and

(iii) The applicant must agree to obtain permission from the Agency prior to granting any additional security interests in the real estate.

(2) *Real estate held under a purchase contract.* If the real estate offered as security is held under a recorded purchase contract:

(i) An applicant must provide a security interest in the real estate;

(ii) An applicant and the purchase contract holder must agree in writing that any insurance proceeds received to compensate for real estate losses will be used only to replace or repair the damaged real estate;

(iii) An applicant must refinance the existing purchase contract, or demonstrate that financing is not available, if an acceptable contract of sale cannot be negotiated or the purchase contract holder refuses to agree to apply all the insurance proceeds to repair or replace the damaged real estate and wants to retain some of the proceeds as an extra payment on the balance owed;

(iv) The purchase contract must not be subject to summary cancellation on default and must not contain any provisions that are contrary to the Agency's best interests; and

(v) The contract holder must agree in writing to notify the Agency of any breach by the purchaser, and give the Agency the option to rectify the conditions that amount to a breach within 30 days after the date the Agency receives written notice of the breach.

(3) *Chattel security.* If chattel property is pledged as security for a loan the Agency must obtain a first lien on the chattel that is being purchased, repaired, replaced, refinanced, or produced with the loan funds.

(e) *Same security for multiple loans.* The same property may be pledged as security for more than one Farm Loan Program loan.

(f) *Lack of adequate security.* When adequate security is not available because of the disaster, the loan application may be approved if the Agency determines based on the plan required in paragraph (a)(1) of this section there is a reasonable assurance that the applicant has the ability to repay the loan (based on an on-going operational basis, excluding special one-time sources of income or expenses) provided:

(1) The applicant has pledged as collateral for the loan, all available personal and business collateral, except those items listed in paragraphs (h)(1) and (h)(2) of this section;

(2) The farm plan, approved by the Agency, indicates the loan will be repaid based upon the applicant's production and income history; addresses applicable pricing risks through the use of marketing contracts, hedging, or options and includes a marketing plan or similar risk management practice; and

(3) The applicant has had positive net cash farm income in at least 1 of the past 5 years.

(g) *Conditions for taking other assets as security.*

(1) *Conditions.* In addition to the requirements for adequate and additional security, the Agency will take a security interest in other assets (other than assets listed under the exceptions in paragraph (h) of this section), if available, when:

(i) An applicant has non-essential assets that are not being converted to cash to reduce the loan amount; or

(ii) The real estate security and chattel security do not provide adequate security for the loan.

(2) *List of other assets.* Other assets may include:

(i) A pledge of real estate or chattel by a third party;

(ii) Patents, copyrights, life insurance, stocks, other securities, and membership in cooperatives, owned by the applicant;

(iii) Assets owned by an applicant that cannot be converted to cash without jeopardizing the farm operation; and

(iv) Non-essential assets owned by the applicant with an aggregate value in excess of $5,000.

(h) *Exceptions to security requirements.* The Agency will not take a security interest in certain property in the following situations:

(1) The property proposed as security has environmental contamination, restrictions, or historical impact that could impair the value or expose the Agency to potential liability;

(2) The Agency cannot obtain a valid lien on the security;

(3) An applicant's personal residence and appurtenances are on a parcel of land separate and apart from that real estate being used as adequate security for the loan; or

(4) An applicant's other assets are used for farming or for essential living expenses and are not needed for security purposes and may include but not limited to subsistence livestock, cash or special cash collateral accounts, retirement accounts, personal vehicles, household goods, and small tools and equipment such as hand tools, power lawn mowers.

(i) *Requirements for security.*

(1) For loans over $25,000, title clearance is required when real estate is taken as security.

(2) For loans of $25,000 or less, when real estate is taken as security, a certification of ownership in real estate is required. Certification of ownership may be in the form of an affidavit which is signed by the applicant, names the record owner of the real estate in question and lists the balances due on all known debts against the real estate. Whenever the loan approving official is uncertain of the record owner or debts against the real estate security, a title search is required.

§ 1945.59 Appraisal and valuation requirements.

(a) *Establishing value for real estate.* Real estate appraisals conducted pursuant to this subpart may be completed by designated appraisers or contract appraisers and shall conform to the Uniform Standards of Professional Appraisal Practice guidelines and standards in accordance with part 761 of this title.

(b) *Establishing value for agricultural commodities and equipment.* When the Agency obtains valuations of agricultural commodities and equipment, such valuations shall be as follows:

(1) The security value of the annual agricultural commodities production (excluding livestock) is presumed to be 100 percent of the amount loaned for annual operating and essential family household expenses; and

(2) The value of livestock and equipment will be market value as determined by the Agency.

(c) *Assets damaged by the disaster.* In the case of farm assets damaged by the disaster, the value of such security shall be established immediately before the disaster occurred.

§ 1945.60 Insurance for loan security.

(a) *Adequacy of insurance.* An applicant must obtain insurance, consistent with this section, equal to the lesser of the value, of the security at the time of the closing of the loan, or the principal of the loan.

(b) *Hazard insurance.* All security (except growing crops) must be covered by hazard insurance.

(c) *Flood or mudslide insurance.* Real estate security located in flood or mudslide prone areas, as determined by the Agency, must be covered by flood or mudslide insurance.

(d) *Crop insurance.*

(1) *Requirement to obtain crop insurance.* Except as provided in paragraph (d)(2) of this section, prior to the closing of the loan under this subpart, the applicant must have obtained at least the catastrophic risk protection level of crop insurance coverage for the crop during the crop year for which the loan is sought for each crop which is a basic part of an applicant's total farming operation, if such insurance is available, unless the applicant executes a written waiver of any emergency crop loss assistance with respect to such crop.

(2) *Exception.* Growing crops used to provide adequate security must be covered by crop insurance if such insurance is available.

(e) *Indemnities.* A borrower must:

(1) List the Agency as loss payee for the insurance indemnity payment or as a beneficiary of a mortgagee loss payable clause; and

(2) In the case of crop insurance, execute an assignment of indemnity in favor or the Agency.

§ 1945.61 Charges and fees.

The applicant must pay all filing, recording, notary, and lien search fees necessary to process and close a loan. The applicant may pay or be reimbursed for these fees from Emergency loan funds.

Subpart D—[Removed]

4. Subpart D is removed.

Signed at Washington, DC, on August 30, 2000.

August Schumacher, Jr.,

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 00–23226 Filed 9–11–00; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–40–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; Withdrawal.

SUMMARY: This document withdraws a notice of proposed rulemaking (NPRM) that would have applied to all British Aerospace Jetstream Models 3101 and 3201 airplanes. The proposed AD would have required you to revise the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. The proposed AD was the result of reports of in-flight incidents and an accident (on airplanes other than the referenced British Aerospace airplanes) that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. British Aerospace has shown the design of the affected airplanes, including the language currently in the AFM, is adequate to address the conditions identified in the proposed AD for these airplanes. Therefore, AD action is not necessary to address the conditions on these airplanes and we are withdrawing the NPRM.

ADDRESSES: You may look at information related to this action at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–40–AD, 901 Locust, Room 506, Kansas City, Missouri 64106, between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Larry E. Werth, Airworthiness Directive Coordinator, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone:

(816) 329–4147; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What action has FAA taken to date? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all British Aerospace Jetstream Models 3101 and 3201 airplanes that are equipped with pneumatic deicing boots. The proposal was published in the **Federal Register** as an NPRM on October 8, 1999 (64 FR 54811). The NPRM proposed to require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first sign of ice accumulation on the airplane.

Was the public invited to comment? The FAA invited interested persons to take part in making this amendment. We received a comment on the proposed AD from British Aerospace. Our analysis and disposition of this comment follow:

Comment Disposition

What is the commenter's concern? British Aerospace provides data it believes shows the design of the affected airplanes, including the language currently in the AFM, is adequate to address the conditions identified in the proposed AD for these airplanes. Therefore, British Aerospace requests that FAA withdraw the NPRM.

What is FAA's response to the concern? After evaluating the data that British Aerospace sent, we have determined the design of the affected airplanes, including the language currently in the AFM, is adequate to address the conditions identified in the proposed AD for these airplanes. We will withdraw the NPRM as British Aerospace requests.

The FAA's Determination

What is FAA's final determination on this issue? Based on the above information, we have determined there is no need for the NPRM, Docket No. 99–CE–40–AD, and that we should withdraw it.

Withdrawal of this NPRM does not prevent us from issuing another notice in the future, nor will it commit us to any course of action in the future.

Regulatory Impact

Does this AD involve a significant rule or regulatory action? Since this action only withdraws a proposed AD, it is not an AD and, therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, FAA withdraws the notice of proposed rulemaking, Docket No. 99–CE–40–AD, published in the **Federal Register** on October 8, 1999 (64 FR 54811).

Issued in Kansas City, Missouri, on September 5, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–23323 Filed 9–11–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–047–FOR]

Texas Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Texas proposes revisions to and additions of regulations concerning remining, coal processing plants, and procedures for processing petitions to designate lands as unsuitable for mining. Texas intends to revise its program to be consistent with the corresponding Federal regulations.

This document gives the times and locations that the Texas program and the proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4 p.m., c.d.t., October 12, 2000. If requested, we will hold a public hearing on the amendment on October 10, 2000. We will accept requests to speak at the hearing until 4 p.m., c.d.t. on September 27, 2000.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

You may review copies of the Texas program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, Capitol Station, P. O. Box 12967, Austin, Texas 78711–2967, Telephone: (512) 46–6900.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. Internet: mwolfrom@tokgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the February 27, 1980, **Federal Register** (45 FR 12998). You can find later actions concerning the Texas program at 30 CFR 943.10, 943.15, and 943.16.

II. Description of the Proposed Amendment

By letter dated August 24, 2000 (Administrative Record No. TX–650.01), Texas sent us an amendment to its program under SMCRA and the Federal regulations at 30 CFR 732.17(b). Texas sent the amendment in response to our letter dated November 22, 1999 (Administrative Record No. TX–650), that we sent to Texas under 30 CFR 732.17(c). The amendment also includes changes made at Texas' own initiative. Texas proposes to amend the Texas Coal Mining Regulations. Below is a summary of the changes proposed by Texas. The full text of the program amendment is available for your inspection at the locations listed above under **ADDRESSES.**

1. Backfilling and Grading: General Grading Requirements [§ 12.385 (surface) and § 12.552 (underground)]

Texas proposes to add new sections that describe the backfilling and grading performance standards for previously mined areas.

2. Coal Processing Plants: Performance Standards [§ 12.651]

Texas proposes to add new language to include cross references to topsoil requirements for coal processing plant reclamation.

3. Procedures: Initial Processing, Record Keeping and Notification Requirements [§ 12.80]

a. At § 12.80(a)(1), Texas proposes to change the timeframe for determining whether an unsuitability petition is complete from 60 days to 30 days.

b. Texas proposes to remove § 12.80(a)(3) and to redesignate § 12.80(a)(4) through (a)(7) as § 12.80(a)(3) through (a)(6). Texas also proposes to add new language to redesignated § 12.80(a)(3) to expand the definition of ''frivolous petition.''

c. Texas proposes to remove § 12.80(b)(2) that deals with discretionary hearings on petition completeness and to redesignate § 12.80(b)(3) as § 12.80(b)(2).

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Texas program.

Written Comments: If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

Electronic Comments: Please submit Internet comments as an ASCII, WordPerfect, or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SPATS NO. TX–047–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Tulsa Field Office at (918) 581–6430.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at OSM's Tulsa Field Office (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing: If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t. on September 27, 2000. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

If you are disabled and need a special accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting: If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the proposed amendment, you may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will also make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary under SMCRA.

Executive Order 12988—Civil Justice Reform

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

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of

section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5. U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

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

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 5, 2000.

Malcolm Ahrens,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 00–23378 Filed 9–11–00; 8:45 am]

BILLING CODE 4310–05–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 256

[Docket No. 2000–4 CARP CRA]

Adjustment of Cable Statutory License Royalty Rates

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is submitting for public comment a settlement proposal for the adjustment of the royalty rates for the cable statutory license.

DATES: Comments and Notices of Intent to Participate are due by October 12, 2000.

ADDRESSES: If sent by mail, an original and five copies of comments and Notices of Intent to Participate should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, copies should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Jr., Senior Attorney for Compulsory Licenses, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax (202) 252–3423.

SUPPLEMENTARY INFORMATION:

I. Background

Section 111 of the Copyright Act, 17 U.S.C., creates a statutory license for cable systems that retransmit to their subscribers over-the-air broadcast signals. Royalty fees for this license are calculated as percentages of a cable system's gross receipts received from subscribers for receipt of broadcast signals. A cable system's individual gross receipts determine the applicable percentages. These percentages, and the gross receipts limitations, are published in 37 CFR part 256 and are subject to adjustment at five-year intervals. 17 U.S.C. 801(b)(2)(A) & (D). This is a window year for such an adjustment.

A cable rate adjustment is initiated by the filing of a petition from a party with a significant interest in the rates. The Library received two such petitions: One filed on behalf of the National Basketball Association, the National Hockey League, Major League Baseball, and the National Collegiate Athletic Association; the other filed on behalf of syndicated television programmers. The Library published a **Federal Register** notice seeking comment on these petitions and directed interested parties to file a Notice of Intent to Participate in a Copyright Arbitration Royalty Panel (''CARP'') proceeding. 65 FR 10564 (February 28, 2000). The Library also designated a 30-day period to negotiate a settlement as to adjustment of the rates. 37 CFR 251.63(a). The Library extended the negotiation period on two separate occasions in Orders dated May 15, 2000, and June 5, 2000. The extensions proved to be successful, as the Library has now received a joint proposal to adjust the cable royalty fees and the gross receipts limitations.

When a joint proposal is received in a rate adjustment proceeding,

> the Librarian may, upon the request of the parties, submit the agreed upon rate to the public in a notice-and-comment proceeding. The Librarian may adopt the rate embodied in the proposed settlement without convening an arbitration panel, provided that no opposing comment is received by the Librarian from a party with an intent to participate in a CARP proceeding.

37 CFR 251.63(b). This **Federal Register** notice implements the requirements of § 251.63(b).

II. Proposed Rates and Gross Receipts Limitations

On June 30, 2000, the Library received a joint proposal from the National Cable Television Association; the Joint Sports Claimants; the Program Suppliers; the Canadian Claimants; the Public Television Claimants; the National Association of Broadcasters; Broadcast Music, Inc.; the American Society of Composers, Authors and Publishers; SESAC, Inc.; the Devotional Claimants; and National Public Radio, which represent all the parties that filed a Notice of Intent to Participate in this proceeding. The joint proposal puts forward adjustments to the cable license royalty rates, pursuant to 17 U.S.C. 801(b)(2)(A), and the gross receipts

limitations, pursuant to 17 U.S.C. 801(b)(2)(D). The details of the adjustments are as follows.

With respect to rates, the joint proposal raises the basic (or minimum) fee for providing broadcast stations from .893 of 1 per centum to .956 of 1 per centum of gross receipts for the privilege of further transmitting any non-network programming of a primary transmitter in whole or in part beyond the local service area of such primary transmitter; the fee for the first distant signal equivalent from .893 of 1 per centum to .956 of 1 per centum of gross receipts; the fee for the second, third, and fourth distant signal equivalent from .563 of 1 per centum to .630 of 1 per centum of gross receipts; and the fee for the fifth distant signal equivalent and each distant signal equivalent thereafter, from .265 of 1 per centum to .296 of 1 per centum of gross receipts.

With respect to the gross receipts limitations which determine the size of a cable system (small, medium or large) and the royalty fee percentages that apply to those characterizations, the joint proposal puts forward increases as well. The gross receipts threshold for determining when a cable system is a small system would be raised from $75,800 to $98,600. Medium-sized cable systems have two methods of calculating their royalties, depending upon which side of the limitation threshold their gross receipts result. That threshold would be raised from $146,000 to $189,800, with the minimum reportable gross receipts over $189,800 being raised from $5,600 to $7,400. Finally, the gross receipts limitation for determining a large cable system would be raised from $292,000 to $379,600.

The joint proposal establishes July 1, 2000, as the effective date of these rates, meaning that they would apply to royalty calculations and payments made by cable systems beginning with the second accounting period of 2000.

III. Proposed Rulemaking

As noted above, the Library is publishing the terms of the joint proposal as proposed amendments to parts 201 and 256 of its rules. Any party who wishes to challenge these proposed rules must submit its written comments to the Librarian of Congress no later than close of business on October 12, 2000. The content of the written challenge should describe the party's interest in this proceeding, the proposed rule or rules that the party finds objectionable, and the reasons for the challenge.

In addition, any party submitting written challenges must also submit an accompanying Notice of Intent to Participate in a CARP proceeding to adjust the cable rates and gross receipts limitations. It should be understood that anyone who challenges the proposed rules must be willing to fully participate in a CARP proceeding and have a significant interest in the adjustment of the rates. Failure to submit a Notice of Intent to Participate will preclude an interested party from participating in this proceeding and will preclude consideration of his or her written challenge. Any interested party that does file a Notice of Intent to Participate will be notified as to when the CARP proceeding will commence and when written direct cases will be due.

List of Subjects

37 CFR Part 201

Copyright, Procedures.

37 CFR Part 256

Cable television, Royalties.

For the reasons set forth in the preamble, the Library proposes to amend 37 CFR parts 201 and 256 as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

§ 201.17 Statements of Account covering compulsory licenses for secondary transmissions by cable systems.

2. In § 201.17(d)(2), remove ''$292,000'' each place it appears and add ''$379,600'' in its place.

3. In § 201.17(e)(12), remove ''$75,800'' and add ''$98,600'' in its place.

4. In § 201.17(g)(2)(ii), remove ''.893'' and add ''.956'' in its place.

PART 256—ADJUSTMENT OF ROYALTY FEE FOR CABLE COMPULSORY LICENSE

5. The authority citation for part 256 continues to read:

Authority: 17 U.S.C. 702, 802.

§ 256.2 Royalty fee for compulsory license for secondary transmission by cable systems.

6. In § 256.2(a), introductory text, remove the phrase ''the first semiannual accounting period of 1985'' and add the phrase ''the second semiannual accounting period of 2000'' in its place.

7. In § 256.2(a)(1), remove ''.893'' and add ''.956'' in its place.

8. In § 256.2(a)(2), remove ''.893'' and add ''.956'' in its place.

9. In § 256.2(a)(3), remove ''.563'' and add ''.630'' in its place.

10. In § 256.2(a)(4), remove ''.265'' and add ''.296'' in its place.

11. In § 256.2(b), introductory text, remove the phrase ''the first semiannual accounting period of 1985'' and add the phrase ''the second semiannual accounting period of 2000'' in its place.

12. In § 256.2(b)(1), remove ''$146,000'' and add ''$189,800'' in its place, and remove ''$5,600'' and add ''$7,400'' in its place.

13. In § 256.2(b)(2), remove ''$146,000'' each place it appears, and add ''$189,800'' in its place, and remove ''$292,000'' each place it appears and add ''$379,600'' in its place.

Dated: September 7, 2000.

David O. Carson,

General Counsel.

[FR Doc. 00–23388 Filed 9–11–00; 8:45 am]

BILLING CODE 1410–33–P

DEPARTMENT OF DEFENSE

48 CFR Part 204

[DFARS Case 2000–D002]

Defense Federal Acquisition Regulation Supplement; Closeout of Foreign Military Sales Contract Line Items

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule; withdrawal.

SUMMARY: DoD is withdrawing the proposed rule published at 65 FR 19865 on April 13, 2000. The rule proposed amendments to the contract closed out policy in the Defense Federal Acquisition Regulation Supplement to specify that, if a contract includes Foreign Military Sales (FMS) contract line items and non-FMS contract line items, the FMS line items should be closeout as soon as the closeout requirements for those line items are satisfied. This change was proposed as part of a DoD initiative to improve the FMS process. Public comments on the proposed rule indicated that many automated acquisition systems could not accommodate this change. Therefore, DoD is withdrawing the proposed rule and is exploring alternative methods of expediting the closeout of FMS contract line items.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–4245;

telefax (703) 602–0350. Please cite DFARS Case 2000–D002.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 00–23371 Filed 9–11–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management

48 CFR Part 442

[AGAR Case 99–02]

RIN 0599–AA09

Agriculture Acquisition Regulation; Designation and Mandatory Use of Contractor Performance System

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document invites written comments on a proposed amendment to the Department of Agriculture's (USDA) Agriculture Acquisition Regulation (AGAR). USDA proposes to amend the AGAR to establish the National Institutes of Health (NIH) Contractor Performance System as the single USDA-wide automated performance evaluation system. Regulations are being revised to identify that system and specify its mandatory use.

DATES: Comments are requested no later than November 13, 2000.

ADDRESSES: Submit written comments concerning this proposed rule to Patrice K. Honda, U.S. Department of Agriculture, Office of Procurement, Property and Emergency Preparedness, Procurement Policy Division, Stop 9303, 1400 Independence Avenue SW, Washington, DC 20250–9303. Submit electronic comments via electronic mail to: pat.honda@usda.gov. Submit comments via facsimile to: (202) 720–8972. See Supplementary Information section for detailed information about filing of comments.

FOR FURTHER INFORMATION CONTACT: Patrice K. Honda, (202) 720–8924.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Executive Order Nos. 12866 and 12988
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

I. Background

The AGAR implements the Federal Acquisition Regulation (FAR) (48 CFR chapter 1) where further implementation is needed, and supplements the FAR where coverage is needed for subject matter not covered by the FAR. AGAR section 442.1502 currently provides that the heads of the contracting activities are responsible for establishing past performance evaluation procedures and systems as required by FAR sections 42.1502 and 42.1503. USDA has identified a single automated performance evaluation system (the NIH Contractor Performance System) to be used USDA-wide and proposes to modify AGAR section 442.1502 to identify that system and specify its mandatory use by all USDA contracting activities. Information about the NIH Contractor Performance System is available on the internet at *http://ocm.od.nih.gov/cdmp/cps.htm.*

II. Procedural Requirements

A. Executive Order Nos. 12866 and 12988

USDA prepared a work plan for this regulation and submitted it to the Office of Management and Budget (OMB) pursuant to Executive Order No. 12866. OMB determined that the rule was not significant for the purposes of Executive Order No. 12866. Therefore, the rule has not been reviewed by OMB. USDA has reviewed this rule in accordance with Executive Order No. 12988, Civil Justice Reform. The proposed rule meets the applicable standards in section 3 of Executive Order No. 12988.

B. Regulatory Flexibility Act

USDA reviewed this rule under the Regulatory Flexibility Act, 5 U.S.C. 601–611, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. USDA certifies that this rule will not have a significant economic effect on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared. However, comments from small entities concerning parts affected by the proposed rule will be considered. Such comments must be submitted separately and cite 5 U.S.C. 609 (AGAR Case 99–02) in correspondence.

C. Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed on the public by this rule. Accordingly no OMB clearance is required by section 350(h) of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulation at 5 CFR Part 1320.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. No. 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. USDA has determined that the proposed rule, if promulgated, would not contain a Federal mandate. USDA has also determined that the proposed rule, if promulgated, would not significantly or uniquely affect small governments. Accordingly, the proposed rule is not subject to the requirements of Title II of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 4325, August 10, 1999), imposes requirements on USDA 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.''

USDA has determined that this proposed 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. The rule will not impose substantial costs on States and localities. Accordingly, this proposed rule is not subject to the requirements of Executive Order 13132.

F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, entitled, ''Consultation and Coordination with Indian Tribal Governments'' (63 FR 27655, May 14, 1998), USDA may not issue a regulation that is not required by statute if that regulation significantly or uniquely affects the communities of Indian Tribal governments, and if it imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the costs of compliance incurred by the tribal governments or USDA consults with those tribal governments. USDA has determined

that this proposed rule does not significantly or uniquely affect the communities of Indian Tribal governments and, therefore, the requirements of Executive Order 13084 do not apply to this proposed rule.

List of Subjects in 48 CFR Part 442

Acquisition regulations, Government contracts, Government procurement, Procurement.

For the reasons set out in the preamble, the Office of Procurement and Property Management proposes to amend 48 CFR Part 442 as set forth below:

PART 442—CONTRACT ADMINISTRATION

1. The authority citation for part 442 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

2. Revise section 442.1502 to read as follows:

442.1502 Policy.

The Contractor Performance System (CPS), developed by the National Institutes of Health, is designated as the single USDA-wide system for maintaining contractor performance/evaluation information. Use of the CPS is mandatory. As a minimum, the CPS shall be accessed for contractor past performance information as part of proposal evaluation in accordance with FAR 15.3, and information resulting from the evaluation of contractor performance in accordance with FAR 42.15 shall be entered into and maintained in this system. The CPS is a part of the USDA Acquisition Toolkit which can be accessed from the USDA Procurement Homepage at *http://www.usda.gov/da/procure.html.*

Done at Washington, D.C., this 5th day of September, 2000.

W.R. Ashworth,

Director, Office of Procurement and Property Management.

[FR Doc. 00–23187 Filed 9–11–00; 8:45 am]

BILLING CODE 3410–TX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 090500A]

New England Fishery Management Council; Public Meeting

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

ACTION: Public meetings.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3-day public meeting on September 26, 27, and 28, 2000, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). During this timeframe, the Council's Herring Oversight Committee also will meet.

DATES: The Herring Oversight Committee will meet on Tuesday, September 26 at 8:30 a.m. Following the committee meeting, the full Council will meet on Tuesday, September 26 at 10:30 a.m., and on Wednesday, September 27, and Thursday, September 28, 2000, beginning at 8:30 a.m.

ADDRESSES: The meetings will be held at the Holiday Inn Express (formerly Seaport Inn Conference Center), 110 Middle Street, Fairhaven, MA 02719; telephone (508) 997-1281. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465-0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465-0492.

SUPPLEMENTARY INFORMATION:

Tuesday, September 26, 2000

The Herring Oversight Committee will meet to develop recommendations for consideration by the full Council on herring foreign fishing permit conditions and restrictions. Recommendations may be specific to a permit application already submitted by Lithuania, or may be applicable to any subsequent permit applications received for the 2001 fishing year (January 1, 2001-December 31, 2001). Following the Herring Committee meeting, the Council will swear in new and re-appointed members, and elect 2000-2001 officers. The Herring Committee will then provide its recommendations on herring foreign fishing permit conditions and restrictions. The Capacity Committee will recommend for consideration by the Groundfish Committee proposals that will allow the transfer of fishing permits, address latent (unused) days-at-sea (DAS), and allow the transfer of groundfish DAS.

Wednesday, September 27, 2000

The Scallop Committee's report will be presented on the second day of the Council meeting and will include a presentation of the 2000 Stock Assessment and Fishery Evaluation (SAFE) Report on the sea scallop resource. The Council will also consider approval of initial action on the annual adjustment to the Atlantic Sea Scallop Fishery Management Plan (FMP). Discussion will focus on selection of management alternatives. Issues may include, but are not limited to, DAS allocations, access to the Hudson Canyon and Virginia/North Carolina closed areas, new area closures, and a prohibition on shell stocking.

Thursday, September 28, 2000

The third day of the meeting will begin with reports on recent activities from the Council Chairman, Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, and representatives of the Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission. There will also be a report on the Northwest Atlantic Fisheries Organization's most recent meeting. The Groundfish Overfishing Definition Committee will report on its review of the Council's overfishing definitions. The Groundfish Committee will then provide an update on development of management options for Amendment 13 to the Northeast Multispecies FMP, including a discussion of alternatives within the status quo management option, area management option(s), and a sector allocation option. The chairman also will report on committee discussions concerning rebuilding schedules of overfished groundfish stocks. Following the Groundfish Committee discussions, there will be a presentation of the available skate stock assessment and fishery information to be included in the Skate SAFE Report. The Skate Committee will provide its recommendation on issues to be included in a scoping document for a Skate FMP. The Enforcement Committee will provide the Council with its recommendations concerning a safe

harbor experimental fishery that would allow vessels to enter Gloucester Harbor without unloading haddock trip limit overages. The Habitat Committee will ask the Council to approve a response to the Atlantic States Marine Fisheries Commission's request for comments on a report about gear impacts on submerged aquatic vegetation. There will be updates on the activities of the Mid-Atlantic Council's FMPs' Research Steering and Monkfish Committees. After addressing any other outstanding business, the Council will adjourn.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

The Council will consider public comments at a minimum of two Council meetings before making recommendations to the NMFS Regional Administrator on any framework adjustment to a fishery management plan. If she concurs with the adjustment proposed by the Council, the Regional Administrator has the discretion to publish the action either as proposed or final regulations in the Federal Register. Documents pertaining to framework adjustments are available for public review 7 days prior to a final vote by the Council.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: September 7, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–23399 Filed 9–11–00; 8:45 am]

BILLING CODE 3510-22-S

Notices

Federal Register

Vol. 65, No. 177

Tuesday, September 12, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Applications for FY 2001 National Research Initiative Competitive Grants Program

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of the Availability of the Solicitation for Applications for the Fiscal Year 2001 National Research Initiative Competitive Grants Program, and Request for Stakeholder Input.

SUMMARY: This notice announces the availability of the fiscal year (FY) 2001 solicitation for applications which is titled the ''NRI Program Description'' for the National Research Initiative (NRI) Competitive Grants Program administered by the Competitive Research Grants and Awards Management Division, Cooperative State Research, Education, and Extension Service (CSREES). The solicitation invites applications for competitive grant awards in agricultural, forest, and related environmental sciences for FY 2001.

By this notice, CSREES also requests input regarding the FY 2001 NRI program solicitation from any interested party. These comments will be considered in the development of the next solicitation for applications for this program. Such comments will be used in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998.

DATES: Proposals must be postmarked on or before the dates provided in the table at the end of this notice.

User comments are requested within six months from the issuance of this notice. Comments received after that date will be used to the extent practicable.

ADDRESSES: Written user comments should be submitted by mail to: Policy and Program Liaison Staff; Office of Extramural Programs; USDA–CSREES; STOP 2299; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2299; or via e-mail to: RFP–OEP@reeusda.gov.

FOR FURTHER INFORMATION CONTACT: USDA/CSREES/NRI, Stop 2241, 1400 Independence Ave., SW, Washington, DC 20250–2241. Phone: (202) 401–5022. E-mail: nricgp@reeusda.gov.

SUPPLEMENTARY INFORMATION:

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Stakeholder Input

CSREES is requesting comments regarding the FY 2001 NRI solicitation for applications from any interested party. In your comments, please include the name of the program and the fiscal year solicitation for applications to which you are responding. These comments will be considered in the development of the next solicitation for applications for the program. Such comments will be used in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998, 7 U.S.C. 7613(c). Comments should be submitted as provided for in the ''Addresses'' and ''Dates'' portions of this notice. The e-mail address in the ''Addresses'' portion is intended only for receiving comments regarding the FY 2001 NRI program solicitation, and not for requesting information or forms.

Authority and Applicable Regulations

The authority for this program is contained in 7 U.S.C. 450i(b). Under this program, subject to the availability of funds, the Secretary may award competitive research grants, for periods not to exceed five years, for the support of research projects to further the programs of the United States Department of Agriculture (USDA).

Regulations applicable to this program include the following: (a) the regulations governing the NRI, 7 CFR part 3411, which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects; (b) the USDA Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, 7 CFR part 3019; (c) the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015; (d) the USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR part 3016; and (e) 7 U.S.C. 3103(17), which defines ''sustainable agriculture.''

Conflicts of Interest

For the purpose of determining conflicts of interest in accordance with 7 CFR 3411.12, the academic and administrative autonomy of an institution shall be determined by reference to the 2000 Higher Education Directory, published by Higher Education Publications, Inc., 6400 Arlington Boulevard, Suite 648, Falls Church, Virginia 22042. Phone: (703) 532–2305.

Project Types and Eligibility Requirements

The FY 2001 NRI program solicitation solicits proposals for the following types of projects:

I. Conventional Projects

(a) Standard Research Grants: Research will be supported that is fundamental or mission-linked, and that is conducted by individual investigators, co-investigators within the same discipline, or multidisciplinary teams. Any State agricultural experiment station, college, university, other research institution or organization, Federal agency, national laboratory, private organization, corporation, or individual may apply. Proposals submitted by non-United States organizations will not be considered for support.

(b) Conferences: Scientific meetings that bring together scientists to identify research needs, update information, or advance an area of research are

recognized as integral parts of research efforts. Any State agricultural experiment station, college, university, other research institution or organization, Federal agency, national laboratory, private organization, corporation, or individual is an eligible applicant in this area. Proposals submitted by non-United States organizations will not be considered for support.

II. Agricultural Research Enhancement Awards

To contribute to the enhancement of research capabilities in the research program areas described herein, the FY 2001 NRI program solicitation solicits applications for Agricultural Research Enhancement Awards. Such applications may be submitted by any State agricultural experiment station, college, university, other research institution or organization, Federal agency, national laboratory, private organization, corporation, or individual; however, further eligibility requirements are defined in 7 CFR 3411.3 and restated in the FY 2001 NRI program solicitation, which is titled the ''NRI Program Description.'' Applications submitted by non-United States organizations will not be considered for support. However, United States citizens applying as individuals for Postdoctoral Fellowships may perform all or part of the proposed work at a non-United States organization. Agricultural Research Enhancement Awards are available in the following categories:

(a) Postdoctoral Fellowships.

(b) New Investigator Awards.

(c) Strengthening Awards: Institutions in USDA Experimental Program for Stimulating Competitive Research (EPSCoR) entities are eligible for strengthening awards. 7 CFR 3411.2(o) sets forth how EPSCoR entities are determined. For FY 2001, USDA EPSCoR states consist of the following:

Alaska
Arkansas
Connecticut
Delaware
Hawaii
Idaho
Kentucky
Maine
Mississippi
Montana
Nevada
New Hampshire
New Mexico
North Dakota
Rhode Island
South Carolina
South Dakota
Vermont
West Virginia
Wyoming

For FY 2001, other USDA-EPSCoR entities consist of the following:

American Samoa
District of Columbia
Guam
Micronesia
Northern Marianas
Puerto Rico
Virgin Islands

Investigators at small and mid-sized institutions (total enrollment of 15,000 or less) may also be eligible for Strengthening Awards. An institution in this instance is an organization that possesses a significant degree of autonomy. Significant degree of autonomy is defined by being independently accredited as determined by reference to the 2000 Higher Education Directory, published by Higher Education Publications, Inc., 6400 Arlington Boulevard, Suite 648, Falls Church, Virginia 22042. Phone: (703) 532–2305.

Institutions which are among the most successful universities and colleges for receiving Federal funds for science and engineering research, except those in USDA EPSCoR entities, are ineligible for strengthening awards. The top 100 institutions for receiving these funds, excluding those in USDA EPSCoR entities, are as follows:

Baylor College of Medicine
Boston University
California Institute of Technology
Carnegie-Mellon University
Case Western Reserve University
Colorado State University
Columbia University
Cornell University
CUNY Mount Sinai School of Medicine
Duke University
Emory University
Florida State University
Georgia Institute of Technology
Harvard University
Indiana University Purdue University at Indianapolis
Johns Hopkins University
Massachusetts Institute of Technology
Medical College of Wisconsin
Michigan State University
New York University
North Carolina State University
Northwestern University
Ohio State University
Oregon Health Sciences University
Oregon State University
Pennsylvania State University
Princeton University
Purdue University
Rockefeller University
Rutgers, The State University of New Jersey
Scripps Research Institute
Stanford University
State University of New York at Stony Brook
Thomas Jefferson University
Tufts University
Tulane University
University Corporation for Atmospheric Research
University of Alabama Birmingham
University of Arizona
University of California Berkeley
University of California Davis
University of California Irvine
University of California Los Angeles
University of California San Diego
University of California San Francisco
University of California Santa Barbara
University of Chicago
University of Cincinnati
University of Colorado Boulder
University of Colorado Health Sciences Center
University of Florida
University of Georgia
University of Illinois Urbana-Champaign
University of Illinois Chicago
University of Iowa
University of Maryland Baltimore
University of Maryland College Park
University of Massachusetts Medical School Worcester
University of Medicine and Dentistry of New Jersey
University of Miami
University of Michigan Ann Arbor
University of Minnesota Twin Cities
University of Missouri Columbia
University of North Carolina Chapel Hill
University of Oklahoma
University of Pennsylvania
University of Pittsburgh
University of Rochester
University of Southern California
University of Texas at Austin
University of Texas Health Science Center Houston
University of Texas Health Science Center San Antonio
University of Texas MD Anderson Cancer Center
University of Texas Medical Branch Galveston
University of Texas SW Medical Center Dallas
University of Utah
University of Virginia
University of Washington
University of Wisconsin Madison
Utah State University
Vanderbilt University
Virginia Polytechnic Institute and State University
Virginia Commonwealth University
Wake Forest University
Washington University
Wayne State University
Woods Hole Oceanographic Institute

Yeshiva University, New York

See 7 CFR 3411.3 and the FY 2001 NRI program solicitation for complete details on programs and eligibility.

Funding Categories for FY 2001

The FY 2001 NRI program solicitation solicits proposals, subject to the availability of funds, for support of high priority research of importance to agriculture, forestry, and related environmental sciences, in the following research categories (ANTICIPATED FY 2001 (FY01) funding and ACTUAL FY 2000 (FY00) funding, rounded to the $0.1M, follows in parentheses):

- Natural Resources and the Environment (FY01: $19.1M, FY00. $19.1M)
- Nutrition, Food Quality, and Health (FY01: $14.9M, FY00. $14.9M)
- Plant Systems (FY01: $38.2M, FY00: $38.2M).
- Animal Systems (FY01: $27.0M, FY00: $27.0M).
- Markets, Trade, and Policy (FY01: $4.3M, FY00: $4.3M).
- New Products and Processes (FY01: $7.6M, FY00: $7.6M).

Support for research opportunities listed below may be derived from one or more of the above funding categories based on the nature of the scientific topic to be supported. In addition, the funds described above may be used to fund proposals submitted to supplementary NRI solicitations and/or solicitations for multiagency programs in which the NRI is participating.

Pursuant to 7 U.S.C. 450i(b)(10), no less than 10 percent (FY01: $11.1M, FY00: $11.1M) of the available funds listed above will be made available for Agricultural Research Enhancement Awards (excluding New Investigator Awards), and no more than 2 percent (FY01: $2.2M, FY00: $2.2M) of the available funds listed above will be made available for equipment grants. Further, no less than 30 percent (FY01: $33.4M, FY00: $33.4M) of the funds listed above shall be made available for grants for research to be conducted by multidisciplinary teams, and no less than 40 percent (FY01: $44.5M, FY00: $44.5M) of the funds listed above shall be made available for grants for mission-linked systems research.

CSREES is prohibited from paying indirect costs exceeding 19 per centum of the total Federal funds provided under each award on competitively awarded research grants (7 U.S.C. 3310). An alternative method of calculation of this limitation is to multiply total direct costs by 23.456 percent.

Research Opportunities

The funds appropriated as listed above will be used to support research grants in the following areas:

NATURAL RESOURCES AND THE ENVIRONMENT

Plant Responses to the Environment
Ecosystem Science
Soils and Soil Biology
Watershed Processes and Water Resources

NUTRITION, FOOD SAFETY, AND HEALTH

Improving Human Nutrition for Optimal Health
Food Safety
Epidemiological Approaches for Food Safety

ANIMALS

Animal Reproduction
Animal Growth and Nutrient Utilization
Animal Genome and Genetic Mechanisms
Animal Genome: Basic Reagents and Tools
Animal Health and Well-Being

BIOLOGY AND MANAGEMENT OF PESTS AND BENEFICIAL ORGANISMS

Entomology and Nematology
Biologically Based Pest Management
Biology of Plant-Microbe Associations
Biology of Weedy and Invasive Plants

PLANTS

Plant Genome
Plant Genetic Mechanisms
Plant Growth and Development
Plant Biochemistry

MARKETS, TRADE, AND RURAL DEVELOPMENT

Markets and Trade
Rural Development

ENHANCING VALUE AND USE OF AGRICULTURAL AND FOREST PRODUCTS

Value-Added Products Research
Food Characterization/Process/Product Research
Non-Food Characterization/Process/Product Research
Improved Utilization of Wood and Wood Fiber

AGRICULTURAL SYSTEMS RESEARCH (integrated, multidisciplinary research on agricultural systems)

Application Materials

This notice does not constitute the FY 2001 NRI program solicitation. Those wishing to apply for a grant under this program should obtain a copy of the FY 2001 NRI program solicitation, which is titled the ''NRI Program Description,'' and a copy of the NRI Application Kit. The NRI Program Description and the NRI Application Kit contain the information and materials necessary to prepare and submit a proposal. The FY 2001 NRI program solicitation, which contains research topic descriptions, and the NRI Application Kit, which contains detailed instructions on how to apply and the requisite forms, are available through the NRI home page, www.reeusda.gov/nri. CSREES encourages the use of these electronic documents. However, if necessary, paper copies of these application materials may be obtained by sending an e-mail with your name, complete mailing address (not e-mail address), phone number, and materials that you are requesting to psb@reeusda.gov. Materials will be mailed to you (not e-mailed) as quickly as possible. Alternatively, paper copies may be obtained by writing or calling the office indicated below.

Proposal Services Unit, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2245, 1400 Independence Ave., SW, Washington, D.C. 20250–2245, Telephone: (202) 401–5048.

Materials Available on the Internet

The following are among the materials available on the NRI home page (www.reeusda.gov/nri).

NRI Program Description

The FY 2001 NRI program solicitation is titled the ''NRI Program Description.'' This document is available on the internet for the current fiscal year, and describes NRI funding programs. To apply for a grant, it is necessary to obtain both the FY 2001 NRI program solicitation (the FY 2001 ''NRI Program Description'') and the NRI Application Kit.

NRI Application Kit

This document contains guidelines for proposal preparation and the requisite forms.

NRI Abstracts of Funded Research

The abstracts available on this searchable database are nontechnical abstracts written by the principal investigator of each individual grant, starting with FY 1993. Each entry also includes the title, principal investigator(s), awardee institution, dollar amount, and proposal number for each grant. The first two digits of the proposal number indicate the fiscal year in which the proposal was submitted.

NRI Annual Report

The NRI Annual Reports starting with FY 1995 are available. These reports include descriptions of the program concept, the authorization, policy, inputs to establish research needs, program execution, and outcomes, including relevant statistics. Also included are examples of recent research funded by the NRI.

Electronic Subscription to NRI Documents

The NRI has set up a mailserver which will notify subscribers when publications such as its Program Description or Abstracts of Funded Research are available electronically on the World Wide Web. Subscribers will not receive the document itself, but instead will receive an e-mail containing an announcement regarding the document's availability on the NRI home page.

To subscribe:

Send an e-mail message to: majordomo@reeusda.gov

In the body of the message, include only the words: *subscribe nri-epubs*

To unsubscribe:

Send an e-mail message to: majordomo@reeusda.gov

In the body of the message, include only the words: *unsubscribe nri-epubs*

Please note that this is not a forum. Messages, other than those related to subscription, cannot be posted to this address.

NRI Deadline Dates

The following fixed dates have been established for proposal submission deadlines within the NRI. To be considered for funding in any fiscal year, proposals must be transmitted by the date listed below (as indicated by postmark or date on courier bill of lading). When the deadline date falls on a weekend or Federal holiday, transmission must be made by the following business day.

Programs offered in any fiscal year depend on availability of funds and deadlines may be delayed due to unforeseen circumstances. Consult the pertinent NRI notice in the **Federal Register**, the NRI Program Description, or the NRI home page (www.reeusda.gov/nri) for up-to-date information.

Postmarked dates and program codes	Program Areas
November 15:	
22.1	Plant Responses to the Environment.
23.0	Ecosystem Science.
25.0	Soils and Soil Biology.
26.0	Watershed Processes and Water Resources.
31.0	Improving Human Nutrition for Optimal Health.
51.9	Biology of Weedy and Invasive Plants.
80.1	Research Career Enhancement Awards.
80.2	Equipment Grants.
80.3	Seed Grants.
100.0	Agricultural Systems.
December 15:	
52.1	Plant Genome.
52.2	Plant Genetic Mechanisms.
53.0	Plant Growth and Development.
61.0	Markets and Trade.
62.0	Rural Development.
71.1	Food Characterization/Process/Product Research.
71.2	Non-Food Characterization/Process/Product Research.
January 15:	
32.0	Food Safety.
32.1	Epidemiological Approaches for Food Safety.
41.0	Animal Reproduction.
44.0	Animal Health and Well-Being.
51.2	Entomology and Nematology.
51.7	Biologically Based Pest Management.
51.8	Biology of Plant-Microbe Associations.
73.0	Improved Utilization of Wood and Wood Fiber.
February 15:	
42.0	Animal Growth and Nutrient Utilization.
43.0	Animal Genome and Genetic Mechanisms.
43.1	Animal Genome: Basic Reagents and Tools.
54.3	Plant Biochemistry.

Done at Washington, D.C., this 5 day of September 2000.

Charles W. Laughlin,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 00–23369 Filed 9–11–00; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Alabama

AGENCY: Natural Resources Conservation Service (NRCS) in Alabama, U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Alabama for review and comment.

SUMMARY: It is the intention of NRCS in Alabama to issue conservation practice standards:

Filter Strip—Code 393

Nutrient Management—Code 590
Waste Utilization—Code 633

DATES: Comments will be received until October 12, 2000.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Robert N. Jones, State Conservationist, Natural Resources Conservation Service (NRCS), 3381 Skyway Drive, P.O. Box 311, Auburn, AL 36830. Copies of the practice standards will be made available upon written request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS in Alabama will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS in Alabama regarding disposition of those comments and a final determination of change will be made.

Dated: August 31, 2000.

J.B. Chaffin,

Assistant State Conservationist, Natural Resources Conservation Service, Auburn, Alabama.

[FR Doc. 00–23363 Filed 9–9–00; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Hawaii Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Hawaii Advisory Committee to the Commission will convene at 8:00 a.m. and adjourn at 8:00 p.m. on Friday, September 29, 2000, at the Hilton Hawaiian Village, 2005 Kalia Road, Honolulu, Hawaii 96815–1999. The purpose of the factfinding, one day open meeting is to discuss the impact of the *Rice* vs. *Cayetano* Supreme Court decision on the State of Hawaii.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 5, 2000.

Lisa M. Kelly,

Special Assistant to the Staff Director, Regional Programs Coordination Unit.

[FR Doc. 00–23276 Filed 9–11–00; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–703]

Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 12, 2000.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Charles Riggle, Group II, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4162, (202) 482–0650, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR Part 351 (April 1999).

SUMMARY: On May 10, 2000, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on granular polytetrafluoroethylene resin (PTFE resin) from Italy. This review covers one producer/exporter of subject merchandise. The period of review (POR) is August 1, 1998, through July 31, 1999. Based on our analysis of comments received, these final results differ from the preliminary results. The final results are listed below in the section ''Final Results of Review.''

SUPPLEMENTARY INFORMATION:

Background

This review covers sales of PTFE resin made during the POR by Ausimont SpA/Ausimont USA (Ausimont). On May 10, 2000, the Department published the preliminary results of this review. See Notice of Preliminary Results of Antidumping Duty Administrative Review: Polytetrafluoroethylene Resin from Italy, 65 FR 30064 (May 10, 2000) (Preliminary Results). We invited parties to comment on the Preliminary Results. On June 12, 2000, we received case briefs from Ausimont and the petitioner, E.I. DuPont de Nemours & Company (DuPont). On June 19, 2000, we received rebuttal briefs from Ausimont and DuPont.

Scope of the Review

The product covered by this review is granular PTFE resin, filled or unfilled. This order also covers PTFE wet raw polymer exported from Italy to the United States. See Granular Polytetrafluoroethylene Resin from Italy; Final Affirmative Determination of Circumvention of Antidumping Duty Order, 58 FR 26100 (April 30, 1993). This order excludes PTFE dispersions in water and fine powders. During the period covered by this review, the subject merchandise was classified under item number 3904.61.00 of the Harmonized Tariff Schedule of the United States (HTS). We are providing this HTS number for convenience and Customs purposes only. The written description of the scope remains dispositive.

Fair Value Comparisons

We calculated constructed export price (CEP) and normal value (NV) based on the same methodology used in the preliminary results, except for corrections to the calculation of CEP profit. *See* our response to Comment 2 in the September 5, 2000, memorandum: Issues and Decision Memorandum for the Final Results in the 1998/1999 Antidumping Duty Administrative Review of Granular Polytetrafluoroethylene Resin from Italy (Decision Memorandum), as well as the September 5, 2000, Analysis Memorandum for Ausimont S.p.A.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the September 5, 2000, Decision Memorandum, which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the Decision

Memorandum. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in Room B–099 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at www.ia.ita.doc. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

As a result of our review, we determine that the following percentage weighted-average margin exists for the period August 1, 1998, through July 31, 1999:

Manufacturer/exporter	Period	Margin (percent)
Ausimont S.p.A	08/01/98–07/31/99	0.72

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. We will direct the Customs Service to assess antidumping duties by applying the assessment rate to the entered value of the merchandise.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Act: (1) For Ausimont, the cash deposit rate will be the rate listed above; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent final results in which that manufacturer participated; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 46.46 percent, the ''all others'' rate established in the less-than-fair-value investigation (50 FR 26019, June 24, 1985). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested.

Failure to comply with the regulations and the terms of an APO is a sanctionable violation. This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 5, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

Appendix

List of Comments in the Issues and Decision Memorandum:

1. Application of the Special Rule for Value Added Merchandise; and
2. CEP Profit Calculation.

[FR Doc. 00–23392 Filed 9–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–802; A–475–802; A–599–802; A–588–807]

Revocation of the Antidumping Duty Orders on Industrial Belts From Germany, Italy, Singapore, and Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of revocation of antidumping duty orders on industrial belts from Germany, Italy, Singapore, and Japan.

SUMMARY: On December 30, 1999, the Department of Commerce (''the Department''), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (''the Act''), determined that revocation of the antidumping duty orders on industrial belts from Germany, Italy, Singapore, and Japan would be likely to lead to continuation or recurrence of dumping. See Final Results of Expedited Sunset Reviews: Industrial Belts from Germany, Italy, Singapore, and Japan (''Final Results''), 64 FR 73511 (December 30, 1999). On August 30, 2000, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that revocation of the above antidumping duty orders on industrial belts from Germany, Italy, Singapore, and Japan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See Certain Industrial Belts from Germany, Italy, Japan, and Singapore (''ITC Final Results''), 65 FR 52785 (August 30, 2000). Therefore, pursuant to 19 CFR 351.222(i)(1), the Department is publishing this notice of the revocation of the antidumping duty orders on industrial belts from Germany, Italy, Singapore, and Japan.

EFFECTIVE DATE: January 1. 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or James Maeder, Office of Policy for Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, D.C. 20230; telephone: (202) 482–1930 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION

Background

On June 1, 1999, the Department initiated (64 FR 73511), and the Commission instituted (64 FR 29342), sunset reviews of the antidumping duty orders on industrial belts from Germany, Italy, Singapore, and Japan. As a result of its reviews, the Department found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping, and notified the Commission of the magnitude of the margins were the orders revoked.

On August 30, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on industrial belts from Germany, Italy, Singapore, and Japan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See ITC Final Results, 65 FR 48733 (August 9, 2000), and USITC Publication 3341 (August 2000), Investigation Nos. 731–TA–413–415 and 419 (Review).

Scope of the Orders

The merchandise covered by the antidumping duty order on Germany includes industrial belts other than V-belts and synchronous belts used for power transmission, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (*i.e.,* closed loops) belts, or in belting in lengths or links from Germany and Japan.[1] The antidumping duty order on imports from Italy covers industrial V-belts and synchronous belts and components used for power transmission, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (*i.e.,* closed loops) belts, or in belting in length or links.[2] The antidumping duty order on imports from Singapore includes industrial V-Belts used for power transmission. These include industrial V-belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (*i.e.,* closed loops) belts, or in belting in lengths or links.[3] The antidumping duty order on imports from Japan covers industrial V-belts and synchronous belts and other industrial belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (*i.e.,* closed loops) belts, or in belting in lengths or links.[4]

The above orders exclude conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses and lift trucks.

The subject merchandise was classifiable under Tariff Schedules of the United States Annotated (''TSUSA'') item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, and 773.3520 in the orders for all four countries. Currently, subject merchandise is classifiable under item numbers 3926.90.55, 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.10.10, 4010.10.50, 4010.91.11, 4010.91.15, 4010.91.19, 4010.91.50, 4010.99.11, 4010.99.15, 4010.99.19, 4010.99.50, 5910.00.10, 5910.00.90, and 7326.20.00 of the Harmonized Tariff Schedule of the United States (''HTSUS'').[5]

In its substantive response, The Gates Rubber Company (''Gates'') asserts that the HTSUS subheading of Chapter 40 were significantly revised in 1996, and, as a result, the products covered by the orders became classifiable under HTSUS numbers 3626.90.55, 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.21.30, 4010.21.60, 4010.22.30, 4010.22.60, 4010.23.30, 4010.23.41, 4010.23.45, 4010.23.50, 4010.23.90, 4010.24.30, 4010.24.41, 4010.24.45, 4010.24.50, 4010.24.90, 4010.29.10, 4010.29.20, 4010.29.30, 4010.29.41, 4010.29.45, 4010.29.50, 4010.29.90, 5910.00.10, 5910.00.90, and 7326.20.00.[6] U.S. Customs officials confirmed the accuracy of the HTSUS numbers for subject merchandise suggested by Gates.[7] However, the above HTSUS and TSUSA subheadings are provided for convenience and customs purposes only and the written description remains dispositive.

The Department has made the following scope rulings for the orders on imports from Germany, Italy, and Japan:

With respect to the order on subject imports from Germany, the Department's sole administrative review clarified that the scope of the order includes round belts and flat belts (56 FR 9672, March 7, 1991). Additionally, the Department determined in a 1991 scope ruling that the scope of the order includes nylon core flat belts and excludes spindle belting.[8]

With respect to the order on subject imports from Italy, the Department, in the February 24, 1993, Scope Ruling, determined that ''Panther'' industrial belts from Pirelli Power Corp. are within the scope of the order (58 FR 11209).

With respect to the order on subject imports from Japan, the Department has made several scope rulings. The following products were determined to be within the scope of the order:

[1] See Antidumping Duty Order of Sales at Less Than Fair Value; Industrial Belts and Components and Parts Thereof, Whether Cured on Uncured, From the Federal Republic of Germany, 54 FR 25316 (March 17, 1991), and Antidumping Duty Order of Sales at Less Than Fair Value; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Japan, 54 FR 25314 (June 14, 1989).

[2] See Antidumping Duty Order of Sales at Less Than Fair Value; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Italy, 54 FR 25313 (June 14, 1989).

[3] See Antidumping Duty Order of Sales at Less Than Fair Value; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Singapore, 54 FR 25315 (June 14, 1989).

[4] See Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Japan; Final Results of Antidumping Duty Administrative Review, 60 FR 39929 (August 4, 1995).

[5] Subject merchandise from Germany excludes item numbers 3926.90.55, 4010.10.10, and 4010.10.50; subject merchandise from Singapore excludes item numbers 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.91.11, 4010.91.15, 4010.91.19, 4010.99.11, 4010.99.15, 4010.99.19, and 4010.99.50.

[6] According to Gates, subject merchandise from Germany excludes item numbers 3926.90.55, 4010.21.30, 4010.21.60, 4010.22.30, 4010.22.60, 4010.23.30, 4010.23.41, 4010.23.45, 4010.23.50, 4010.23.90, 4010.24.30, 4010.24.41, 4010.24.45, 4010.24.50, 4010.24.90, 4010.29.10, and 4010.29.20 (*see* July 1, 1999, Substantive Response of Gates at 3); and subject merchandise from Singapore excludes item numbers 3926.90.56, 3926.90.57, 3926.90.59, 4010.23.30, 4010.23.41, 4010.23.45, 4010.23.50, 4010.23.90, 4010.24.30, 4010.24.41, 4010.24.45, 4010.24.50, 4010.24.90, 4010.29.30, 4010.29.41, 4010.29.45, 4010.29.50, 4010.29.90 for imports (*see* July 1, 1999, Substantive Response of Gates at 3).

[7] *See* December 23, 1999, Memo to File of telephone conversation with George Barthes, U.S. Customs official, regarding new HTSUS numbers for industrial belts.

[8] *See* Scope Rulings, 56 FR 57320 (November 8, 1991).

Product within scope	Importer	Citation
V-volt model 5L118	Japan Freight Consolidators (Calif.), Inc	57 FR 16602 (May 7, 1992).
Closed loop synthetic timing belt used in the Epson LX–800 desk-top personal computer printer.	Tower Group International, Inc. and Epson America, Inc.	58 FR 47124 (Sept. 7, 1993).

The following products were determined to be not within the scope of the order:

Product outside scope	Importer	Citation
59011 series of belts	Kawasaki Motors Corp., USA	57 FR 19692 (May 7, 1992).
Certain round and flat belts which are composed of rubber or plastics but are not reinforced with a tensile member.	Matsushita Electric Corp., Matsushita Floor Care Company and Panasonic Company.	57 FR 57420 (December 4, 1992).
Conveyor Belts of five-series comprised of 30 models.	Nitta Industries Corp., and Nitta International, Inc.	58 FR 59991 (Nov. 12, 1993).
Eight-drive and blade belts	Honda Power Equipment Manufacturing Inc	62 FR 30569 (June 4, 1997).
Twenty-two drive and blade belts	American Honda Motor Co	62 FR 30569 (June 4, 1997).

Determination

As a result of the determination by the Commission that revocation of the antidumping duty orders on industrial belts from Germany, Italy, Singapore, and Japan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the revocation of the antidumping duty orders on industrial belts from Germany, Italy, Singapore, and Japan. The Department will instruct the Customs Service to discontinue suspension of liquidation and collection of cash deposits, and to refund any cash deposits collected, on entries of subject merchandise entered or withdrawn from warehouse on or after January 1, 2000 (the effective date). The Department will complete any pending administrative reviews of these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: September 6, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–23396 Filed 9–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–479–801]

Revocation of Antidumping Duty Order: Industrial Nitrocellulose From Yugoslavia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Revocation of antidumping duty order: Industrial nitrocellulose from Yugoslavia.

SUMMARY: Pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the United States International Trade Commission (''the Commission'') determined that revocation of the antidumping duty order on industrial nitrocellulose from Yugoslavia is not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* 65 FR 52786 (August 30, 2000). Therefore, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1), the Department of Commerce (''the Department'') is revoking the antidumping duty order on industrial nitrocellulose from Yugoslavia. Pursuant to section 751(c)(6)(A) of the Act and 19 CFR 351.222(i)(2), the effective date of revocation is January 1, 2000.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 1999, the Department initiated, and the Commission instituted, a sunset review (64 FR 29261 and 64 FR 29344) of the antidumping duty order on industrial nitrocellulose from Yugoslavia pursuant to section 751(c) of the Act. As a result of its review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order revoked. *See* Final Results of Expedited Sunset Review: Industrial Nitrocellulose From Yugoslavia, 64 FR 57852 (October 27, 1999).

On August 30, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on industrial nitrocellulose from Yugoslavia would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* Industrial Nitrocellulose From Brazil, China, France, Germany, Japan, Korea, the United Kingdom, and Yugoslavia 65 FR 52786 (August 30, 2000), and USITC Publication 3342, Inv. No. 731–TA–96 (Review) (August 2000).

Scope

The merchandise subject to this antidumping duty order is industrial nitrocellulose from Yugoslavia. Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content greater than 12.2 percent. Industrial nitrocellulose is currently classifiable under Harmonized Tariff Schedule (''HTS'') item number 3912.20.00. The HTS item number is provided for convenience and customs purposes only. The written description remains dispositive.

Determination

As a result of the determination by the Commission that revocation of this antidumping duty order would not be likely to lead to continuation or recurrence of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1), the Department hereby orders the revocation of the antidumping duty order on industrial nitrocellulose from Yugoslavia. Pursuant to section 751(c)(6)(A) of the Act and 19 CFR 351.222(i)(2), this revocation is effective January 1, 2000. The Department will instruct the U.S. Customs Service to discontinue suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after January 1, 2000 (the effective date). The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: September 6, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–23395 Filed 9–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–804, A–427–009, A–428–803, A–588–812, A–580–805, A–570–802, A–412–803]

Continuation of Antidumping Duty Orders: Industrial Nitrocellulose From Brazil, France, Germany, Japan, Korea, the People's Republic of China, and the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of antidumping duty orders: Industrial nitrocellulose from Brazil, France, Germany, Japan, Korea, the People's Republic of China, and the United Kingdom.

SUMMARY: On October 27, 1999, the Department of Commerce (''the Department''), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (''the Act''), determined that revocation of the antidumping duty orders on industrial nitrocellulose from Brazil, France, Germany, Japan, Korea, the People's Republic of China (''PRC''), and the United Kingdom (''UK'') is likely to lead to continuation or recurrence of dumping. See 64 FR 57854, 57859, 57843, 57845, 57847, 57857, 57850 (October 27, 1999).

On August 30, 2000, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty orders on industrial nitrocellulose from Brazil, France, Germany, Japan, Korea, the PRC, and the UK would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* 65 FR 52786 (August 30, 2000). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of continuation of the antidumping duty orders on industrial nitrocellulose from Brazil, France, Germany, Japan, Korea, the PRC, and the UK.

EFFECTIVE DATE OF CONTINUATION: September 12, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 1999, the Department initiated, and the Commission instituted, sunset reviews (64 FR 64 FR 29261 and 64 FR 29344) of the antidumping duty orders on industrial nitrocellulose from Brazil, France, Germany, Japan, Korea, the PRC, and the UK pursuant to section 751(c) of the Act. *See* 64 FR 57854, 57859, 57843, 57845, 57847, 57857, 57850 (October 27, 1999). As a result of its reviews, the Department found on October 27, 1999, that revocation of the antidumping duty orders on industrial nitrocellulose from Brazil, France, Germany, Japan, Korea, the PRC, and the UK would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the orders revoked. *See* 64 FR 57854, 57859, 57843, 57845, 57847, 57857, 57850 (October 27, 1999).

On August 30, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on industrial nitrocellulose from Brazil, France, Germany, Japan, Korea, the PRC, and the UK would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* Industrial Nitrocellulose From Brazil, France, Germany, Japan, Korea, China, and the United Kingdom, 65 FR 52786 (August 30, 2000) and USITC Publication 3342, Investigation Nos. 731–TA–96 and 439–445 (Review) (August 2000).

Scope of the Orders

The product covered by these antidumping duty orders is industrial nitrocellulose from Brazil, France, Germany, Japan, Korea, the PRC, and the UK. Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of these orders does not include explosive grade nitrocellulose which has a nitrogen content greater than 12.2 percent. Industrial nitrocellulose is currently classifiable under Harmonized Tariff Schedule (''HTS'') item number 3912.20.00. The HTS item number is provided for convenience and customs purposes only. The written description remains dispositive.

Determination

As a result of the determination by the Department and the Commission that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1), the Department hereby orders the continuation of the antidumping duty orders on industrial nitrocellulose from Brazil, France, Germany, Japan, Korea, the PRC, and the UK.

The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this notice. Pursuant to section 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of the orders on industrial nitrocellulose from Brazil, France, Germany, Japan, Korea, the PRC, and the UK not later than August 2005.

Dated: September 6, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–817]

Oil Country Tubular Goods From Mexico: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and intent not to revoke in part.

SUMMARY: In response to requests from two respondents, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on oil country tubular goods (OCTG) from Mexico. This review covers two manufacturers and exporters of the subject merchandise, Tubos de Acero de Mexico, S.A. de C.V. (TAMSA) and Hylsa S.A. de C.V. (Hylsa). The period of review (POR) is August 1, 1998, through July 31, 1999. We preliminarily determine that sales have not been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties based on the difference between export price (EP) or constructed export price (CEP) and NV. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 12, 2000.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall (TAMSA), Dena Aliadinov (Hylsa), or Linda Ludwig, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 7866, Washington, DC 20230; telephone (202) 482-1398, (202) 482–2667, or (202) 482–3833, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (1999).

Background

The Department published a final determination of sales at less than fair value for OCTG from Mexico on June 28, 1995 (60 FR 33567), and subsequently published the antidumping duty order on August 11, 1995 (60 FR 41056). The Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order for the 1998/1999 review period on August 11, 1999 (64 FR 43649). Respondents TAMSA and Hylsa requested that the Department conduct an administrative review of the antidumping duty order on OCTG from Mexico. On August 31, 1999, Hylsa and TAMSA submitted timely requests that the order be revoked in part with respect to Hylsa and TAMSA, respectively. We initiated this review on September 24, 1999. See 64 FR 53318 (October 1, 1999).

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for issuing a preliminary determination in an administrative review if it determines that it is not practicable to complete the preliminary review within the statutory time limit of 245 days. On March 14, 2000, the Department published a notice of extension of the time limit for the preliminary results in this case to August 30, 2000. See Extension of Time Limit: Oil Country Tubular Goods from Mexico; Antidumping Administrative Review, 65 FR 13716 (March 14, 2000).

Period of Review

The review covers the period August 1, 1998 through July 31, 1999. The Department is conducting this review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are oil country tubular goods, hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.21.30.00, 7403.21.60.00, 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

The Department has determined that couplings, and coupling stock, are not within the scope of the antidumping order on OCTG from Mexico. See Letter to Interested Parties; Final Affirmative Scope Decision, August 27, 1998.

Duty Absorption

On November 1, 1999, a petitioner (North Star Steel Ohio) requested that the Department determine, with respect to TAMSA, whether antidumping duties had been absorbed during the POR. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. Because TAMSA sold to the United States through an importer that is affiliated within the meaning of section 751(a)(4) of the Act, and because this review was initiated four years after the publication of the order, we will make a duty absorption determination in this segment of the proceeding.

Because we have preliminarily determined that there are no dumping margins for TAMSA with respect to its U.S. sales, we also preliminarily determine that there is no duty absorption. As our analysis of the dumping margin may be modified in

our final results, if interested parties wish to submit evidence that the unaffiliated purchasers in the United States will pay any ultimately assessed duty charged to affiliated importers, they must do so no later than 15 days after publication of these preliminary results. Any such information will be considered by the Department if we determine in our final results that there are dumping margins on certain U.S. sales.

Intent Not To Revoke

Section 351.222 of the Department's regulations requires, inter alia, that a company requesting revocation submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in commercial quantities in each of the three years forming the basis of the receipt of such a request; and (3) an agreement that the order will be reinstated if the company is subsequently found to be selling the subject merchandise at less than fair value. *Id.* at 351.222(e)(i). Thus, in determining whether a requesting party is entitled to a revocation inquiry, the Department must determine that the party received a zero or *de minimis* margins for three years forming the basis for the request. 19 CFR 351.222(e)(1). See, *e.g.,* Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order: Brass Sheet and Strip From the Netherlands, 65 FR 742, 743 (January 6, 2000).

Additionally, in determining whether a requesting party is entitled to a revocation inquiry, the Department must be able to determine that the company has continued to participate meaningfully in the U.S. market during each of the three years at issue. See Pure Magnesium From Canada; Preliminary Results of Antidumping Administrative Review and Notice of Intent Not To Revoke Order in Part (Pure Magnesium From Canada), 63 FR 26147, 26149 (May 12, 1998). This practice has been codified by § 351.222(e) where a party requesting a revocation review is required to certify that they have sold the subject merchandise in commercial quantities. See also § 351.222(d)(1) of the Department's regulations, which state that, ''before revoking an order or terminating a suspended investigation, the Secretary must be satisfied that, during each of the three (or five) years, there were exports to the United States *in commercial quantities* of the subject merchandise to which a revocation or termination will apply.'' (emphasis added); see also the preamble of the Department's latest revision of the revocation regulation stating: ''The threshold requirement for revocation continues to be that respondent not sell at less than normal value for at least three consecutive years and that, during those years, respondent exported subject merchandise to the United States in *commercial quantities.''* (emphasis added) Amended Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders, 64 FR 51236, 51237 (September 22, 1999) (Amended Revocation Regulations). For purposes of revocation, the Department must be able to determine that past margins reflect a company's normal commercial activity. Sales during the POR which, in the aggregate, are an abnormally small quantity do not provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping. As the Department has previously stated, the commercial quantities requirement is a threshold matter. See *e.g.,* Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part, 64 FR 50489, 50490 (September 17, 1999). Thus, a party must have meaningfully participated in the marketplace in order to substantiate the need for further inquiry regarding whether continued imposition of the order is warranted.

On August 31, 1999, TAMSA and Hylsa each submitted a request, in accordance with 19 CFR 351.222 (e)(1), that the Department revoke the order covering OCTG from Mexico with respect to their sales of this merchandise. The requests for revocation were accompanied by certifications from both TAMSA and Hylsa that they had not sold the subject merchandise at less than NV for a three-year period, including this review period, and would not do so in the future.

Hylsa

We have preliminarily determined a weighted-average margin of 1.47 percent for Hylsa in the current review period. The margin calculated during the current review period constitutes one of the three consecutive reviews cited by Hylsa to support its request for revocation. Consequently, we preliminarily find that Hylsa does not qualify for revocation of the order under section 351.222(b) of the Department's regulations. Therefore, we have not addressed the issues of whether Hylsa shipped in commercial quantities or whether the continued application of the antidumping duty order is necessary to offset dumping with regard to Hylsa.

TAMSA

In analyzing normal commercial activities characteristic of TAMSA, we examined its sales of merchandise to the United States during the period covered by the antidumping investigation (annualized), and the second, third and fourth administrative reviews. TAMSA's actual sales volume for these periods, on which the Department has based this decision, is proprietary. However, based on ranged (*i.e.,* approximate) quantities in the public version of TAMSA's second supplemental response, TAMSA made very limited sales in the United States, totaling approximately 51 metric tons of subject merchandise during the twelve month period covered by the fourth administrative review.[1] By contrast, during the period covered by the antidumping investigation, which was only six months long, TAMSA made sales totaling approximately 11,000 metric tons.[2] In other words, TAMSA's sales for the entire year covered by the fourth review period were only 0.23 percent of its sales volume during the annualized period covered by the investigation. Similarly, TAMSA made only a few sales of subject merchandise in the United States during both the second and third administrative reviews, totaling approximately 110 metric tons and 130 metric tons respectively.[3] In other words, TAMSA sales in the second and third reviews were only 0.5 percent and 0.59 percent, respectively. Therefore, the number of sales and total sales volume is so small in the U.S. market, both in absolute terms and in comparison with the period of investigation, that we cannot reasonably conclude that the zero margins TAMSA received are reflective of the company's normal commercial experience.

In making a determination with respect to revocation based on an absence of dumping, the Department must consider ''whether the continued application of the antidumping order is otherwise necessary to offset dumping.''

[1] TAMSA's second supplemental response (ranged values, public version) in the current administrative review of OCTG from Mexico (May 17, 2000 at Exhibit A29).

[2] TAMSA's second supplemental response (ranged values, public version) in the current administrative review of OCTG from Mexico (May 17, 2000 at Exhibit A29).

[3] TAMSA's second supplemental response (ranged values, public version) in the current administrative review of OCTG from Mexico (May 17, 2000 at Exhibit A29).

See 19 CFR 351.222(b)(1) (B) and (C) as amended in Amended Revocation Regulations, 64 FR at 51236. The ability to sell to the United States market during three sequential years without dumping is normally deemed to be probative as to a company's future pricing practices. However, this approach assumes that the company continues to participate meaningfully in the U.S. market during that period. In this case, the three years in question are characterized by a negligible number and volume of sales by TAMSA to the U.S. market; therefore, the fact that TAMSA made these sales without dumping does not have the same probative value it would otherwise have. In light of this fact, we preliminarily find that TAMSA did not meaningfully participate in the marketplace for purposes of qualifying for a revocation inquiry and thus, because it has not sold the subject merchandise for three years in commercial quantities within the meaning of 351.222(e), does not qualify for a revocation inquiry. *See* Analysis Memorandum for TAMSA, dated August 30, 2000.

Verification

As provided in section 782(i) of the Act, we verified information provided by both Hylsa and TAMSA (sales and cost) using standard verification procedures, including on-site inspection of the manufacturer's facilities and the examination of the relevant sales and financial records.

Our verification results are outlined in the public versions of the verification reports. See Sales Verification Report dated August 30, 2000 and Cost Verification Report dated August 28, 2000 for Hylsa and Sales Verification Report dated August 30, 2000 and Cost Verification Report dated August 24, 2000 for TAMSA.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents, covered by the descriptions in the ''Scope of the Review'' section of this notice, supra, and sold in the home market during the POR, to be a foreign like product for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the Department's October 4, 1999 questionnaire, or to constructed value (CV).

Fair Value Comparisons

To determine whether sales of OCTG from Mexico to the United States were made at less than fair value, we compared the EP or CEP to the NV, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A (d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

We have used the date of invoice as the date of sale for all home market sales made by TAMSA during the POR. For U.S. sales made by TAMSA, we have used the date of shipment, which corresponds to date of invoice, as the date of sale. For U.S. sales made by Hylsa, we have used the reported purchase order date as the date of sale. Although the Department generally uses invoice date as the date of sale, section 351.401(i) of the Department's regulations stipulates that ''the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'' The agreed-upon price for Hylsa's U.S. sales does not change after the purchase order is issued; therefore, we determined that the purchase order date most accurately reflects the point in time at which the parties reached final agreement as to the material terms of the sale. See Analysis Memorandum for Hylsa, dated August 30, 2000.

Export Price and Constructed Export Price

Hylsa

We calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation. We based EP on packed prices to unaffiliated customers in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight, foreign brokerage and handling, U.S. brokerage and handling, and U.S. customs duties.

TAMSA

Section 772(a) of the Act states that EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States. Section 772(b) of the Act states that CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

In its response to the Department, TAMSA claimed that its sales to the United States were EP sales. However, we reclassified the U.S. sales as CEP sales because the subject merchandise was first sold to an unaffiliated purchaser by a U.S. affiliate of TAMSA (Siderca) after importation into the United States. Siderca receives the purchase order from the unaffiliated U.S. customer, confirms the purchase order with a sales acknowledgment, invoices the unaffiliated U.S. customer, and receives payment. Moreover, sales through Siderca are made through transactions in which Siderca takes title to the merchandise prior to making the sale to the U.S. customer. Based upon its analysis, the Department has preliminarily determined to treat TAMSA's U.S. sales as CEP sales, as defined in section 772(b) of the Act.

We based CEP on the delivered price to unaffiliated customers in the United States. We made adjustments, where applicable, for movement expenses (foreign and U.S. inland freight, foreign and U.S. brokerage, handling expenses, ocean freight, insurance, and U.S. customs duties), credit expenses, and indirect selling expenses that were associated with economic activity in the United States. Finally, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act.

Normal Value

In order to determine whether there were sufficient sales of OCTG in the home market (HM) to serve as a viable basis for calculating NV, we compared the volume of home market sales of subject merchandise to the volume of subject merchandise sold in the United States, in accordance with section 773(a)(1)(C) of the Act.

Hylsa

Hylsa reported that it had no viable home or third country market during the POR. Therefore, in accordance with section 773(a)(4) of the Act, we based NV for Hylsa on CV. In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the costs of materials; labor; overhead; selling, general & administrative (SG&A) expenses; profit; interest expenses; and U.S. packing costs.

We relied on Hylsa's submitted CV, except in the following specific

instances. (See Constructed Value Calculation Adjustments for the Preliminary Determination, Memorandum from Gina Lee to Neal Halper, August 30, 2000).

1. We revised Hylsa's CV data to include the minor corrections presented to us at verification.

2. We revised Hylsa's general and administrative (G&A) rate to be based on the 1999 financial statements instead of the POR financial data. We added extraordinary expenses which related to bonuses as well as the 1999 exchange gains and losses (EGL) related to purchases. We also deducted packing expenses from the cost of goods sold (COGS) denominator.

3. We adjusted Hylsa's financial expense rate to be based on the 1999 financial statements instead of the POR financial data of Alfa, S.A. de C.V., Hylsa's parent company. We also deducted packing expenses from the COGS denominator.

4. We used the profit rate from Hylsa's tubular products division for purposes of calculating the CV. *See* below.

In this case, because Hylsa did not have a viable home market or third country market for this product, we based Hylsa's profit and indirect selling expenses on the following methodology. In accordance with section 773(e)(2)(B)(iii) of the Act, we calculated indirect selling expenses incurred and profit realized by the producer based on the sale of merchandise of the same general types as the exports in question. Specifically, we based our profit calculations and indirect selling expenses on the income statement of Hylsa's tubular products division, a general pipe division that produces OCTG and like products.

TAMSA

TAMSA's aggregate volume of HM sales of the foreign like product was greater than five percent of its respective aggregate volume of U.S. sales of the subject merchandise. Therefore, for TAMSA, we have based NV on HM sales.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses and profit. For EP, the U.S. LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). (See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997).

Hylsa

Because NV for Hylsa is based on CV, the level of trade is that of the sales from which we derive SG&A expenses and profit used in the CV calculations. We derived profit and indirect selling expenses from Hylsa's tubular products division submitted financial sheets worksheets, which we examined at verification.

We compared EP sales to home market sales of the tubular products division to determine whether they were made at the same LOT. To perform this analysis, we compared the selling functions performed by Hylsa on its EP sales to the functions performed on its home market sales in the tubular products division. We found that the selling functions performed for U.S. customers of OCTG did not vary from those performed for the home market customers of the tubular products division. Consequently, the Department preliminary determines that a LOT adjustment is not appropriate for Hylsa's sales.

TAMSA

It is the Department's policy to match, whenever possible, U.S. sales to home market sales of identical merchandise. The Department determined that the U.S. sales made by TAMSA had matches in the home market of identical merchandise within the same month of the U.S. sales. The U.S. sales matched exclusively to home market sales made by TAMSA to PEMEX. We then sought to determine whether these sales to PEMEX were made at the same level of trade as TAMSA's sales to the United States. To determine whether TAMSA's CEP and NV sales were at the same LOT, we compared the CEP sales to the PEMEX HM sales in accordance with the methodology discussed above.

Our analysis of the stages in the marketing process indicates that the sales to the United States were made at a different point in the chain of distribution than the relevant sales to PEMEX. Whereas the sales to PEMEX were made to the end user, TAMSA's U.S. sales, for which we have constructed an export price, were made to a distributor (Siderca). Therefore, the Department analyzed the different selling functions and services which TAMSA provided to these two customers.

We requested information concerning the selling functions associated with sales in each market for TAMSA. In addition to the standard selling functions that TAMSA provided to all home market customers, such as inventory maintenance, technical advice, and others, TAMSA provides other services on a just-in-time basis to PEMEX. Provision of these services requires staff dedicated to administering the just-in-time agreements, and entails certain expenses for TAMSA. Such expenses include provisions and expenditures for breach of contract, salaries and overhead for extra personnel to administer the just-in-time agreements, and other costs. These expenses and selling functions do not exist for TAMSA's sales to the United States. See Analysis Memorandum for TAMSA dated August 30, 2000 for further discussion. Based on this analysis, we preliminarily determine that TAMSA's home market sales to PEMEX and its CEP sales were made at different LOTs.

Section 773(a)(7)(B) of the Act directs us to make an adjustment for differences in LOTs where such differences affect price comparability. Where such an adjustment is not feasible, and the home market LOT is more advanced than the CEP LOT, the Department must make a CEP offset. We examined the data for TAMSA and have determined that we do not have an appropriate basis for a LOT adjustment. Specifically, we note that although TAMSA made sales to other customers which involved different sales functions, it made no sales in Mexico at the LOT of the CEP which could be used to calculate the extent to which price comparability can be attributed to differences in LOT. Thus, the Department is unable to

calculate the amount for a LOT adjustment.

As indicated above, in accordance with section 773(a)(7)(B) of the Act, a CEP offset is warranted where NV is established at a LOT which constitutes a more advanced stage of distribution (or the equivalent) than the LOT of the CEP sale, and a LOT adjustment is not feasible. Because we have determined that TAMSA's home market LOT is different from the CEP LOT and is at a more advanced stage of distribution, as well as that an LOT adjustment is not feasible, we have made a CEP offset pursuant to section 773(a)(7)(B) of the Act.

Cost-of-Production Analysis

Because the Department disregarded sales below cost for TAMSA in the comparison market during the last completed segment of the proceeding, we initiated a cost of production (COP) analysis of TAMSA's home market sales in accordance with section 773(b) of the Act. We conducted the COP analysis as described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, based on the sum of the cost of materials, fabrication and general expenses, and packing costs. We relied on the submitted COPs, except in the following specific instances where the submitted costs were not appropriately quantified or valued.

1. We adjusted the COP and CV by including the standard costs plus the POR variance for those products which were sold, but not produced during the POR.

2. We revised the fixed overhead and variance rate calculations for a mathematical error and computed the expenses as a percentage of standard cost of manufacturing rather than standard cost of sales.

3. We revised the reserve for inventory obsolescence rate calculation by computing the expense as a percentage of total standard costs rather than a per-ton amount.

4. We revised the 1999 G&A expense rate calculation to include certain ''other expenses.''

5. We revised the 1999 financial expense rate calculation to exclude interest income related to accounts receivable.

B. Test of Home-Market Prices

We used TAMSA's weighted-average COPs for the reporting period as adjusted above. In order to determine whether these sales had been made at prices below the COP, we compared the adjusted weighted-average COP figures to home-market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home-market sales made at prices below the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home-market prices, less any applicable movement charges, discounts, and rebates.

C. Results of COP Test

In accordance with section 773(b)(2)(C), for models for which less than 20 percent of TAMSA's sales of a given product were at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' For models for which 20 percent or more of TAMSA's sales during the POR were at prices below the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) of the Act. Furthermore, because we compared prices to POR average COPs, we determined that below-cost prices did not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded such below-cost sales made by TAMSA.

We found that for OCTG products, TAMSA made comparison-market sales at prices below the COP within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis in accordance with section 773(b)(1) of the Act.

D. Calculation of CV

In accordance with section 773(e) of the Act, we calculated CV based on the sum of each company's cost of materials, fabrication, SG&A, U.S. packing costs, interest expenses, and profit. See Normal Value section above for a discussion of the calculation of SG&A and profit for Hylsa.

Price-to-Price Comparisons

We calculated NV for TAMSA based on packed, FOB or delivered prices to unaffiliated customers in Mexico. We made adjustments for discounts and billing adjustments. We made deductions, where appropriate, for foreign inland freight, warehousing and inland insurance pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in circumstances-of-sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses, interest revenue, performance bond costs, royalties and warranties. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6) of the Act.

Price to Constructed Value Comparisons

Where we compared EP to CV for Hylsa, we made COS adjustments by deducting from CV the weighted-average home market direct selling expenses and adding the U.S. direct selling expenses, in accordance with section 773(a)(8) of the Act and section 19 CFR 351.401(c).

Based on our findings at verification, we made adjustments to the reported values for U.S. credit expense, U.S. packing, and U.S. direct selling expense. See Analysis Memorandum for Hylsa for further discussion.

Currency Conversion

For purposes of the preliminary results, we made currency conversions in accordance with section 773A of the Act, based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. See, e.g., Certain Stainless Steel Wire Rods from France; Preliminary Results of Antidumping Duty Administrative Review, 61 FR 8915, 8918 (March 6, 1998), and Policy Bulletin 96–1: Currency Conversions, 61 FR 9434 (March 8, 1996). The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine a fluctuation exists, we substitute the benchmark for the daily rate.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists:

OIL COUNTRY TUBULAR GOODS

Producer/manufacturer/exporter	Weighted-average margin
TAMSA	0
Hylsa	1.47

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. See 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) A statement of the issue, (2) a brief summary of the argument (no longer than five pages including footnotes) and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

Upon issuance of the final results of the review, the Department will determine, and Customs will assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs. The final results of this review will be the basis for the assessment of antidumping duties on entries of merchandise covered by the results and for future deposits of estimated duties. For duty assessment purposes, we will calculate an importer-specific assessment rate by dividing the total dumping margins calculated for the U.S. sales to the importer by the total entered value of these sales. This rate will be used for the assessment of antidumping duties on all entries of the subject merchandise by that importer during the POR.

If the Department determines that revocation is warranted for TAMSA or Hylsa, this decision will apply to all unliquidated entries of subject merchandise produced by TAMSA or Hylsa exported to the United States and entered, or withdrawn from warehouse, for consumption on or after August 1, 1999, the first day after the period under review.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rate as stated above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established in the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any other previous review conducted by the Department, the cash deposit rate will continue to be the ''all other'' rate established by the LTFV investigation, which was 23.79 percent.

This notice serves as a preliminary reminder to importers of their responsibilities under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with Section 751(a)(1) and 777(i)(1) of the Act.

Dated: August 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–23393 Filed 9–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film, Sheet and Strip From Korea: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 8, 2000, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from the Republic of Korea (65 FR 26574). The review covers three manufacturers/exporters of the subject merchandise to the United States: H.S, Industries (HSI), Hyosung Corporation (Hyosung) and SKC Limited (SKC). The review covers the period June 1, 1998 through May 31, 1999. We gave interested parties an opportunity to comment on the preliminary results.

The final weighted-average dumping margins for the reviewed firms are listed in the section entitled Final Results of Review. As a result of comments received, we have made changes to the final margin calculations for SKC.

EFFECTIVE DATE: September 12, 2000.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Robert James, AD/CVD Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4475 or (202) 482–0649, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1999).

SUPPLEMENTARY INFORMATION:

Background

On May 8, 2000, the Department published in the **Federal Register** the preliminary results of administrative

review of the antidumping duty order on PET film from Korea. SKC Co., Ltd. and SKC America, Inc. (collectively SKC) and E.I. DuPont de Nemours & Company and Mitsubishi Polyester Film, LLC (collectively Petitioners) submitted their respective case briefs on June 7, 2000. SKC submitted rebuttal comments on June 16, 2000. Petitioners submitted rebuttal comments on June 19, 2000. The Department has conducted this administrative review in accordance with section 751 of the Tariff Act.

Scope of the Review

Imports covered by this review are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheading is provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage.

The review covers the period June 1, 1998 through May 31, 1999. The Department has conducted this review in accordance with section 751 of the Tariff Act.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated September 5, 2000 which is adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Commerce building. In addition a complete version of the Decision Memorandum can be accessed directly on the Web at www.ia.ita.doc.gov. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results of Review

We have deleted sales of PET film that were subsequently exported from the United States from SKC's U.S. database. Additionally, for purposes of applying the constructed export price (CEP) profit ratio to SKC's indirect U.S. selling expenses, we have applied the CEP profit ratio only to those indirect selling expenses incurred in the United States. Further details regarding these changes can be found in the Decision Memorandum and the SKC September 5, 2000 Final Results Analysis Memorandum, both of which are on file in room B–099 of the main Commerce building.

Final Results of Review

As a result of our analysis of the comments received, we determine that the following margins exist for the period June 1, 1998 through May 31, 1999:

Company	Margin (percent)
HSI	0.00
Hyosung	0.00
SKC	1.23

The U.S. Customs Service will assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. We have calculated an importer-specific assessment rate for subject merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of sales examined.

Furthermore, the following deposit requirements shall be required for all shipments of PET film from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit for SKC shall be 1.23 percent; (2) since the rates for HSI and Hyosung are zero no cash deposit shall be required for those firms, (3) for merchandise exported by manufacturers or exporters not covered in this review but covered in the less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (4) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of the most recent review or the LTFV investigation; and (5) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 21.50 percent the ''all others'' rate established in the LTFV investigation. (*See* Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Notice of Final Court Decision and Amended Final Determination, 62 FR 50557, (September 26, 1997).)

This notice serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested.

Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This administrative review and notice is in accordance with section 751(a)(1) of the Tariff Act.

Dated: September 5, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

Appendix—Issues in the Decision Memorandum

1. Accounting for B-grade Film Costs
2. Calculation of CEP Profit
3. Inclusion in SKC's U.S. Sales Listing of Merchandise Subsequently Exported from the United States
4. Calculation of US Indirect Selling Expenses
5. Proper Home Market Comparison for Model DS10.

[FR Doc. 00–23394 Filed 9–11–00; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–827]

Static Random Access Memory Semiconductors From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 8, 2000, the Department of Commerce published the preliminary results of administrative review of the antidumping duty order on static random access memory semiconductors from Taiwan. The merchandise covered by this order are synchronous, asynchronous, and specialty static random access memory semiconductors from Taiwan, whether assembled or unassembled. This review covers the U.S. sales and/or entries of three manufacturers/exporters. In addition, we are rescinding this review with respect to two companies. The period of review is October 1, 1997, through March 31, 1999, for two of the reviewed companies and October 1, 1998, through March 31, 1999, for the remaining company.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: September 12, 2000.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Shawn Thompson, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–0656 or (202) 482–1776, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (1999).

Background

This review covers three manufacturers/exporters (*i.e.*, G-Link Technology (G-Link), GSI Technology, Inc. (GSI Technology), [1] and Winbond Electronics Corporation (Winbond)).

On May 8, 2000, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on static random access memory semiconductors (SRAMs) from Taiwan. *See Static Random Access Memory Semiconductors from Taiwan; Preliminary Results and Partial Rescission of Antidumping Administrative Review*, 65 FR 26577 (May 8, 2000).

We invited parties to comment on our preliminary results of review. At the request of certain interested parties, we held a public hearing on August 2, 2000. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

The products covered by this review are synchronous, asynchronous, and specialty SRAMs from Taiwan, whether assembled or unassembled. Assembled SRAMs include all package types. Unassembled SRAMs include processed wafers or die, uncut die and cut die. Processed wafers produced in Taiwan, but packaged, or assembled into memory modules, in a third country, are included in the scope; processed wafers produced in a third country and assembled or packaged in Taiwan are not included in the scope. The scope of this review includes modules containing SRAMs. Such modules include single in-line processing modules, single in-line memory modules, dual in-line memory modules, memory cards, or other collections of SRAMs, whether unmounted or mounted on a circuit board. The scope of this review does not include SRAMs that are physically integrated with other components of a motherboard in such a manner as to constitute one inseparable amalgam (*i.e.*, SRAMs soldered onto motherboards). The SRAMs within the scope of this review are currently classifiable under subheadings 8542.13.8037 through 8542.13.8049, 8473.30.10 through 8473.30.90, 8542.13.8005, and 8542.14.8004 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

[1] GSI Technology is also known as Giga Semiconductor, Inc.

Period of Review

The POR is October 1, 1997, through March 31, 1999, for G-Link and Winbond. Because GSI Technology was a respondent in the 1997–1998 new shipper review on SRAMs, the POR for our administrative review of its U.S. sales is October 1, 1998, through March 31, 1999.

Partial Rescission of Review

As noted in the preliminary results, in June and July 1999, respectively, two manufacturers/exporters of subject merchandise to the United States, Alliance Semiconductor (Alliance) and Galvantech, Inc. (Galvantech), withdrew their requests for administrative review. No other interested party requested a review of sales of merchandise produced or exported by either Alliance or Galvantech during the POR. Therefore, in accordance with 19 CFR 351.213(d)(1) and consistent with our practice, we are rescinding our review with respect to Alliance and Galvantech.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (Decision Memo) from Richard W. Moreland, Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated September 5, 2000, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099, of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ia.ita.doc.gov. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculations for two of the three companies under review. These changes are discussed in the relevant sections of the Decision Memo.

Final Results of Review

We determine that the following weighted-average margin percentages exist for the period October 1, 1997, through March 31, 1999 (for G-Link and

Winbond) and the period October 1, 1998, through March 31, 1999 (for GSI Technology):

Manufacturer/exporter	Percent margin
G-Link Technology	32.12
GSI Technology, Inc/Giga Semiconductor Inc	33.85
Winbond Electronics Corp	0.67

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We divided the total dumping margins for the reviewed sales by their total entered value for each importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of SRAMs from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed firms will be the rates shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 41.75. This rate is the ''All Others'' rate from the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 5, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memo

Comments

1. Facts Available
2. Date of Sale for Certain Transactions Related to a Joint-Venture Agreement
3. Unreported Cost Data
4. Ordinary Course of Trade
5. Winbond's Cash Deposit Rate
6. Yields
7. Variances
8. Foreign Exchange Losses Related to Cash Transactions
9. Research and Development Costs
10. Products Produced But Not Sold During the Review Period
11. Bonuses
12. Clerical Errors in Winbond's Calculations
13. Constructed Export Price Offset

[FR Doc. 00–23391 Filed 9–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Missions: 2000 Trade Missions; Automotive Trade Mission to Thailand, the Philippines, Malaysia and Indonesia

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the below listed overseas trade missions. For a more complete description of each trade mission, obtain a copy of the mission statement from the Project Officer indicated for each mission below. Recruitment and selection of private sector participants for these missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions dated March 3, 1997.

Automotive Trade Mission to ASEAN Countries

Bangkok, Thailand; Manila, the Philippines; Kuala Lumpur, Malaysia; Jakarta, Indonesia

April 1–13, 2001

Recruitment closes on January 26, 2001

For further information contact: Mr. Jeffery Dutton, U.S. Department of Commerce. Tel: 202–482–0671, Fax: 202–482–5872, E-Mail: Jeffery_Dutton@ita.doc.gov.

Medical Trade Mission to Israel, Jordan and the United Arab Emirates

Tel Aviv and Jerusalem, Israel; Amman, Jordan; Abu Dhabi, U.A.E.

April 22–29, 2001

Recruitment closes on February 28, 2001

For further information contact: Ms. Lisa Huot, U.S. Department of Commerce. Tel: 202–482–2796, Fax: 202–482–0975, E-Mail: Lisa_Huot@ita.doc.gov.

Information and Communications Technology Trade Mission from Silicon Valley to the Nordic-Baltic Region

Copenhagen, Denmark; Oslo, Norway; Stockholm, Sweden; Helsinki, Finland; St. Petersburg, Russia

December 3–12, 2000

Recruitment closes on November 3, 2000.

For further information contact: Ms. Tish Falco, U.S. Department of Commerce. Tel: 408–970–4615, Fax: 408–970–4618, E-mail: Tish.Falco@mail.doc.gov.

For further information contact Mr. Reginald Beckham, U.S. Department of Commerce. Tel: 202–482–5478, Fax: 202–482–1999.

Dated: September 6, 2000.

Thomas H. Nisbet,

Director, Promotion Planning and Support Division, Office of Export Promotion Coordination.

[FR Doc. 00–23398 Filed 9–11–00; 8:45 am]

BILLING CODE 3510–DR–U

DEPARTMENT OF DEFENSE

Department of the Navy

Extension of Public Comment Period for the Draft Environmental Impact Statement/Draft Overseas Environmental Impact Statement (DEIS/DOEIS) for the Naval Air Warfare Center Weapons Division (NAWCWD) Point Mugu Sea Range

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy (Navy) has prepared and filed with the U.S. Environmental Protection Agency (EPA) a DEIS/DOEIS evaluating the environmental effects of existing and increased testing and training activities on the NAWCWD Point Mugu Sea Range. The public review period previously announced in the **Federal Register** on July 28, 2000 (65 FR 46696) provided for a 45-day comment period with comments due on September 11, 2000. This notice announces the extension of the public review period to October 11, 2000. Five public hearings to receive comments on the DEIS/DOEIS were conducted during August 2000 in Oxnard, California; Camarillo, California; Ventura, California; Santa Barbara, California; and Santa Monica, California.

DATES AND ADDRESSES: *See* **SUPPLEMENTARY INFORMATION** section for dates and addresses.

SUPPLEMENTARY INFORMATION: Per Section 102(2)(c) of the National Environmental Policy Act of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508) and Executive Order 12114 (Environmental Effects Abroad of Major Federal Actions), the Navy has prepared and filed with the EPA a DEIS/DOEIS evaluating the environmental effects of existing and increased testing and training activities on the NAWCWD Point Mugu Sea Range. A Notice of Availability for the DEIS/DOEIS appeared in the **Federal Register** on July 28, 2000 (65 FR 46696). That notice stated that comments on the DEIS/DOEIS were due by September 11, 2000. The Navy is extending the public review period to October 11, 2000. All written comments should be postmarked on or before October 11, 2000. Written comments should be sent to Naval Air Warfare Center Weapons Division, Point Mugu Sea Range EIS, 521 9th Street, Point Mugu, California 93042–5001 (Attn. Ms. Gina Smith, Code 8G0000E, facsimile (805) 989–0143).

The DEIS/DOEIS has been distributed to various federal, state, and local agencies, elected officials, and special interest groups and libraries. Complete copies of the document are available for public review at the following eight information repositories:

- Oxnard Public Library, Reference Desk, 251 South ''A'' Street, Oxnard, California.
- Ray D. Prueter Library, 510 Park Avenue, Port Hueneme, California.

E. P. Foster Library, 651 E. Main Street Ventura, California.

- Santa Barbara Public Library, 40 East Anapamu Street, Santa Barbara, California

Naval Air Station Point Mugu Library, Code 836300E, Building No. 3–10, North Mugu Road, Point Mugu, California.

- Camarillo Public Library, 3100 Ponderosa Drive, Camarillo, California.
- Malibu Library, 23519 West Civic Center Way, Malibu, California.
- Santa Monica Public Library, Reference Section, 1343 6th Street, Santa Monica, California.

The Executive Summary of the DEIS/DOEIS may be viewed on the Point Mugu Sea Range DEIS/DOEIS Home Page at the following web address: *http://www.nawcwpns.navy.mil/~pmeis.*

FOR FURTHER INFORMATION CONTACT: Ms. Gina Smith, Code 8G0000E, Naval Air Warfare Center Weapons Division, Point Mugu Sea Range EIS, 521 9th Street, Point Mugu, CA 93042–5001, telephone (888) 217–9045, facsimile (805) 989–0143. Additional information may be obtained by accessing the Point Mugu Sea Range EIS/OEIS Home Page at the following web address: *http://www.nawcwpns.navy.mil/~pmeis.*

Dated: September 6, 2000.

C.G. Carlson,

Major, U.S. Marine Corps, Alternate Federal Register Liaison Officer.

[FR Doc. 00–23401 Filed 9–11–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Visitors to the U.S. Naval Academy

AGENCY: Department of the Navy, DOD.

ACTION: Notice of meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The meeting will be held on Friday, September 15, 2000 from 8:00 a.m. to 11:00 a.m. The closed Executive Session will be from 10:25 a.m. to 11:00 a.m.

ADDRESSES: The meeting will be held in Room SC5 of the U.S. Capitol Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Thomas E. Osborn, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, (410) 293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of information which pertain to the conduct of various midshipmen at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the special committee meeting shall be partially closed to the public because they will be concerned with matters as outlined in section 552(b)(2), (5), (6), and (7) of title 5, U.S.C. Due to unavoidable delay in administrative processing, the normal 15 days notice could not be provided.

Dated: September 6, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–23404 Filed 9–11–00; 8:45 am]

BILLING CODE 3810–FF–P

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 October 12, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725

17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address Lauren__Wittenberg@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: September 6, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Chief Information Officer

Type of Review: Extension.

Title: Master Plan for Customer Surveys and Focus Groups.

Frequency: On Occasion.

Affected Public: Individuals or household; Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 100,000; Burden Hours: 25,120.

Abstract: This Master Plan allows ED to seek OMB clearance for individual customer satisfaction and focus group surveys in a short time frame. These surveys focus on ways to improve customer service and to further assist the public sector.

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, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her internet address Kathy__Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–23278 Filed 9–11–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory (NETL), Department of Energy (DOE).

ACTION: Notice of Availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–00NT40854, entitled ''Solid State Energy Conversion Alliance (SECA).'' The purpose of the SECA solicitation is to seek Industrial Development Teams to develop a 3 kilawatt (kW)–10kW solid-oxide fuel cell system including stack and balance of plant that has a Factory Cost of $400/kW by 2010. The goal is to develop solid-oxide fuel cell systems that have broad applicability via use of mass customization techniques. Development of solid-oxide fuel cell systems that are applicable to stationary, mobile, and military applications with minimal differences in core module components is also desired.

DATES: A draft solicitation will be available on or about September 15, 2000. Comments and/or questions concerning the draft solicitation shall be submitted to the DOE Contract Specialist no later than 25 days after publication of the solicitation; the mailing address and E-mail address is provided below.

ADDRESSES: The draft solicitation will be available for viewing and downloading from NETL's Homepage at http://www.netl.doe.gov/business. The final version of the solicitation along with all amendments will be posted on the NETL Homepage; applicants are therefore encouraged to periodically check the NETL Homepage to ascertain the status of these documents.

FOR FURTHER INFORMATION CONTACT: Mary S. Gabriele, MS I07, U.S. Department of Energy, National Energy Technology Laboratory, 3610 Collins Ferry Road, P.O. Box 880, Morgantown, WV 26507–0880, E-mail Address: mgabri@netl.doe.gov, Telephone Number: (304) 285–4253.

SUPPLEMENTARY INFORMATION: The U. S. Department of Energy is seeking Industrial Teams to develop a total of three solid-oxide fuel cell system prototypes per team with a net power output of between 3 kilawatts (kW) to 10kW. A single organization (prime) will lead each Industrial Team. The project will be structured in three phases over ten years with minimum goals and requirements established for each phase. A full functional prototype will be tested according to a minimum set of goals and requirements no later than the end of each phase.

This solicitation represents the beginning of a new fuel cell program. The new program will attack the fuel cell commercialization by reducing costs and producing system configurations that have wide applicability. SECA includes two major components—the Industrial Teams Component and the Core Technology Program. This solicitation is for the Industrial Team Component only.

The DOE anticipates award of multiple cost-sharing cooperative agreements; but the DOE reserves the right to award the agreement type and number deemed in its best interest. As required in Section 3002, Title XXX of the Energy Policy Act (EPACT), offerors are advised that *mandatory* cost-share will be required for each phase of the project: 20% for Phase I and 50% for Phases II and III. Funds are not currently available for this solicitation; the Government's obligation under any cooperative agreement awarded is contingent upon the availability of appropriated FY2001 funds.

Issued in Morgantown, WV on August 31, 2000.

Randolph L. Kesling,

Director, Acquisition and Assistance Division.

[FR Doc. 00–23387 Filed 9–11–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–512–000]

Algonquin LNG, Inc.; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2000.

Take notice that on August 31, 2000, Algonquin LNG, Inc. (ALNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to become effective as indicated:

To Be Effective on March 27, 2000

Third Revised Sheet No. 55
Fourth Revised Sheet No. 557A
Second Revised Sheet No. 62
Second Revised Sheet No. 64
Fourth Revised Sheet No. 64A
Fifth Revised Sheet No. 65
Fourth Revised Sheet No. 66

To Be Effective on September 1, 2000

Fourth Revised Sheet No. 51

ALNG states that the purpose of this filing is to comply with the requirements of Order No. 637 regarding the waiver of the rate ceiling for short-term capacity release transactions and the prospective limitations on the availability of the Right-of-First-Refusal.

ALNG states that copies of the filing were mailed to all affected 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, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed 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. 00–23310 Filed 9–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–510–000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2000.

Take notice that on August 31, 2000, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective March 27, 2000:

Third Revised Sheet No. 165
Fourth Revised Sheet No. 169
Fifth Revised Sheet No. 170

MRT states that the purpose of this filing is to remove tariff provisions inconsistent with the two-year waiver of the maximum rate ceiling for short-term capacity release transactions effected by Order No. 637.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed 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. 00–23312 Filed 9–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–524–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2000.

Take notice that on August 31, 2000, ANR Pipeline Company (ANR) tendered for filing as part of itS FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to become effective September 1, 2000:

Forty-third Revised Sheet No. 8
Forty-third Revised Sheet No. 9
Forty-second Revised Sheet No. 13
Fifty-second Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed to implement recovery of approximately $2 million of above-market costs that are associated with its obligations to Dakota Gasification Company (Dakota). ANR proposes a reservation surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs, and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2, so as to recover the remaining ten percent (10%). ANR also advises that the proposed changes would decrease current quarterly Above-Market Dakota Cost recoveries from $2,543,133 to $2,023,299.

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.hti (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–23300 Filed 9–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–447–000]

Distrigas of Massachusetts LLC; Notice of Application

September 6, 2000.

Take notice that on August 28, 2000, Distrigas of Massachusetts LLC (DOMAC), Two Seaport Lane, Suite 1300, Boston, Massachusetts 02210–2019, filed a request with the Commission in Docket No. CP00–447–000 pursuant to Section 7(c) of the Natural Gas Act (NGA) for authorization to construct, install, operate, and maintain facilities at its liquefied natural gas (LNG) terminal in Everett, Massachusetts, to provide LNG sales service to an electric power generation plant under construction by Sithe Mystic Development LLC (Sithe) in Everett, Massachusetts, all as more fully set forth in the application which is open to the public for inspection. This application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

DOMAC states that it would construct, install, operate, and maintain new vaporization equipment and associated systems needed to serve Sithe and to optimize the operating efficiency and productivity of the combined vaporization systems of the LNG plant. DOMAC also states that the proposed facilities would be located entirely within the existing boundaries of the LNG plant. Specifically, DOMAC proposes to install four submerged combustion vaporization units, each having a send-out capacity of 150,000 Mcf per day of natural gas. The vaporizers would be integrated into DOMAC's existing LNG plant with an arrangement of cross-connections and tie-ins. In addition to the vaporizers, cross-connections, and tie-ins, the proposed facilities would include new LNG tank pumps, LNG booster pumps, LNG impoundment and vapor control systems, equipment for treatment of stack effluent, equipment for automatic read-out and treatment of water discharge, a distributed control system, and odorization equipment, all as more fully set forth in the application. DOMAC further states that it would finance the estimated $35,040,000 construction cost for the proposed facilities entirely with funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 27, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Any questions regarding the application should be directed to Robert A. Nailling, Senior Counsel, Distrigas of Massachusetts LLC, Two Seaport Lane, Suite 1300, Boston, Massachusetts 02210–2019, telephone (617) 526–8300.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by everyone of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order at a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for DOMAC to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–23288 Filed 9–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–407]

Duke Energy Corporation; Notice of Meeting

September 6, 2000.

Take notice that the Commission staff will hold a pubic meeting with Duke Energy Corporation, the licensee for the Catawba-Wateree Project No. 2232, Charlotte-Mecklenburg Utilities, their consultant and other interested parties to discuss the issues concerning the preparation of the environmental assessment for the amendment of license.

The meeting will be held on Thursday, September 21, 2000, at 2 p.m., at the FERC Headquarters, 888 First Street, Washington DC, 20426. Expected participants need to give their names to Michael Spencer (FERC) at (202) 219–2846 so that they can get through security. All interested persons are invited to attend the meeting.

For further information, please contact Michael Spencer at (202) 219–2846.

David P. Boergers,

Secretary.

[FR Doc. 00–23290 Filed 9–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3219–000]

EnergyUSA–TPC Corporation; Notice of Issuance of Order

September 6, 2000.

EnergyUSA–TPC Corporation (EnergyUSA) submitted for filing a rate schedule under which EnergyUSA will engage in wholesale electric power and energy transactions at market-based rates. EnergyUSA also requested waiver of various Commission regulations. In particular, EnergyUSA requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by EnergyUSA.

On August 24, 2000, pursuant to delegated authority, the Director, Division on Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by EnergyUSA 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).

Absent a request for hearing within this period, EnergyUSA is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of EnergyUSA's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 25, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order 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. 00–23296 Filed 9–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–521–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing

September 6, 2000

Take notice that on August 31, 2000, Kinder Morgan Interstate Gas Transmission LLC, (KMIGT) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume Nos. 1–C and 1–D, the following tariff sheets, to become effective October 1, 2000:

Second Revised Volume 1–C

1st Rev. Original Sheet No. 0

Second Revised Volume 1–D

1st Rev. Original Sheet No. 0

KMIGT is making this filing to cancel all of its tariff sheets included in Volume Nos. 1–C and 1–D of its FERC Gas Tariff as result of the sale of KMIGT's Buffalo Wallow assets to OkTex Pipeline Company, an interstate pipeline.

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. 00–23303 Filed 9–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00––394–001]

KO Transmission Company; Notice of Tariff Filing

September 6, 2000.

Take notice that on August 25, 2000, KO Transmission Company (KOT) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, to be effective March 27, 2000:

Second Revised Sheet No. 50
Second Revised Sheet No. 51
Second Revised Sheet No. 52
Second Revised Sheet No. 53
Second Revised Sheet No. 54

Pursuant to the Commission's Order No. 637, KOT has modified its capacity release provisions, as set forth in GTC Section 4 of its tariff, to remove the maximum price cap for short-term capacity release transactions. The pertinent tariff provisions are to be effective from March 27, 2000 through September 30, 2002, unless otherwise extended by the Commission.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., 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. 00–23287 Filed 9–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3190–000]

MI Energy, LLC; Notice of Issuance of Order

September 6, 2000.

MI Energy, LLC (MI Energy) submitted for filing a rate schedule under which MI Energy will engage in wholesale electric power and energy transactions at market-based rates. MI Energy also requested waiver of various Commission regulations. In particular, MI Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by MI Energy.

On August 30, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by MI Energy 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).

Absent a request for hearing within this period, MI Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposeS of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of MI Energy's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 29, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order 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. 00–23334 Filed 9–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–523–000]

Michigan Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2000.

Take notice that on August 31, 2000, Michigan Gas Storage Company (MGSCo) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Tariff Sheet No. 61 and Third Revised Tariff Sheet No. 63, with an effective date of March 27, 2000.

MGSCo states that the filing is being made in compliance with Order Nos. 637 and 637–A, regarding the removal of the maximum ceiling rate for capacity release transactions. MGSCo had originally filed these tariff changes as part of the pro forma tariff sheets filed July 17, 2000 in Docket No. RP00–396–000.

MGSCo states that copies of this filing are being served on all customers and applicable state regulatory agencies.

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. 00–23301 Filed 9–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–91–000; et al.]

Morgan Stanley Capital Group Inc. v. California Independent System Operator Corporation, et al.; Notice of Meeting

September 6, 2000.

Morgan Stanley Capital Group Inc. v. California Independent System Operator Corporation	Docket No. EL00–91–000
San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange.	Docket No. EL00–95–000
Investigation of Practices of the California Independent System Operator and the California Power Exchange.	Docket No. EL00–98–000
Reliant Energy Power Generation, Inc., Dynegy Power Marketing, Inc., and Southern Energy California, L.L.C. v. California Independent System Operator Corporation.	Docket No. EL00–97–000
California Electricity Oversight Board v. All Sellers of Energy and Ancillary Services Into the Energy and Ancillary Services Markets Operated by the California Independent System Operator Corporation and the California Power Exchange; All Scheduling Coordinators Acting On behalf of the Above Sellers; California Independent System Operator Corporation; and California Power Exchange Corporation.	Docket No. EL00–104–000
California Independent System Operator Corporation	Docket No. ER00–2208–000
El Segundo Power, LLC	Docket No. ER00–1830–000
California Independent System Operator Corporation	Docket No. ER00–2383–000
Southern Energy Delta, L.L.C	Docket No. ER00–2726–000
Southern Energy Potrero, L.L.C	Docket No. ER00–2727–000
Sempra Energy Trading Corporation	Docket No. ER00–3473–000
California Independent System Operator Corporation	Docket No. ER00–1239–000
California Independent System Operator Corporation	Docket No. ER00–1365–000

Southern California Edison Company	Docket No. ER00–845–000
Pacific Gas and Electric Company	Docket No. ER00–851–000
San Diego Gas & Electric Company	Docket No. ER00–860–000
California Independent System Operator Corporation	Docket No. ER98–3594–000
California Independent System Operator Corporation	Docket No. ER99–4462–000
San Diego Gas & Electric Company	Docket No. ER99–3426–000
California Independent System Power Corporation	Docket Nos. ER98–3760–000; EC96–19–000; ER96–1663–000
California Independent System Operator Corporation	Docket No. ER00–997–000
California Independent System Operator Corporation	Docket No. ER00–703–000
El Segundo Power, LLC	Docket No. ER98–2971–000
Long Beach Generation, LLC	Docket No. ER98–2972–000
AES Redondo Beach, L.L.C.	Docket No. ER98–2843–000
AES Huntington Beach, L.L.C	Docket No. ER98–2844–000
AES Alamitos, L.L.C	Docket No. ER98–2883–000
Ocean Vista Power Generation, L.L.C.; Mountain Vista Power Generation, L.L.C.; Alta Power Generation, L.L.C.; Oeste Power Generation, L.L.C.; Ormond Beach Power Generation, L.L.C..	Docket No. ER98–2977–000
Williams Energy Services Company	Docket No. ER98–3106–000
Duke Energy Oakland, L.L.C.	Docket No. ER98–3416–000
Duke Energy Morro Bay, L.L.C.	Docket No. ER98–3417–000
Duke Energy Moss Landing, L.L.C.	Docket No. ER98–3418–000
Sempra Energy Trading Corporation	Docket No. ER98–4497–000
San Diego Gas & Electric Company	Docket No. ER98–4498–000
California Independent System Operator Corporation	Docket No. ER99–1971–000
Pacific Gas & Electric Company	Docket Nos. ER98–495–000; ER98–1614–000; ER98–2145–000; ER98–3603–000
San Diego Gas & Electric Company	Docket Nos. ER98–496–000, ER98–2160–000
California Independent System Operator Corporation	Docket No. ER99–1770–000
California Independent System Operator Corporation	Docket No. ER99–3301–000
California Independent System Operator Corporation	Docket No. ER99–896–000

The Commission will hold a public meeting on September 12, 2000 in San Diego, California, to discuss participants' views on recent events in California's wholesale electric power markets. During the course of this meeting, discussion of issues pending in the above-listed cases could arise. Any person having an interest in wholesale power prices in California, including any party in the above-listed cases, is invited to attend. There will be a Commission transcript of this discussion. Information discussed or disseminated in the meeting will not constitute part of the decisional record in the above-listed cases, unless formally filed in accordance with Commission regulations, except that the Commission may elect to place the transcript in the official record of Docket Nos. EL00–95–000 and EL00–98–000. Additional information about the meeting may be obtained from the Commission's web page at *www.ferc.fed.us/public/Sandieg.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–23475 Filed 9–11–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–511–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

September 6, 2000.

Take notice that on August 31, 2000, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to become effective September 1, 2000.

Twenty Sixth Revised Sheet No. 9

National states that under Article II, Section 2, of the settlement, it is required to recalculate the maximum Interruptible Gathering (IG) rate monthly and to charge that rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG rate of 24 cents per dth. In addition, Article III, Section 1 states that any overruns of the Firm Gathering service provided by National shall be priced at the maximum IG rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed 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. 00–23311 Filed 9–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

[Docket No. ER00–3240–000]

Oleander Power Project, Limited Partnership; Notice of Issuance of Order

September 6, 2000.

Oleander Power Project, Limited Partnership (Oleander) submitted for

filing a rate schedule under which Oleander will engage in wholesale electric power and energy transactions at market-based rates. Oleander also requested waiver of various Commission regulations. In particular, Oleander requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Oleander.

On August 30, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Oleander 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).

Absent a request for hearing within this period, Oleander is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Oleander's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 29, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order 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. 00–23298 Filed 9–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–522–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2000.

Take notice that on August 31, 2000, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet No. 326, to be effective October 1, 2000.

Panhandle states that the purpose of this filing is to facilitate compliance with the Commission's Regulation of Short-Term Natural Gas Transportation Service, and Regulation of Interstate Natural Gas Transportation Services in Docket Nos. RM98–10–000 and RM98–12–000 issued on February 9, 2000, 90 FERC ¶ 61,109 (Order No. 637) and the revised reporting requirements in Section 161.3(1)(2) of the Commission's Regulations. Specifically, the proposed changes remove the shared operating personnel and facilities information from the tariff. Under the Commission's revised regulations this information will not be available on Panhandle's Internet web site.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

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 and 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. 00–23302 Filed 9–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2030–030; Project No. 11832–000]

Portland General Electric Company; The Confederated Tribes of the Warm Springs Reservation of Oregon; Notice of Meeting

September 6, 2000.

At the request of Portland General Electric Company and The Confederated Tribes of the Warm Springs Reservation of Oregon, a meeting will be convened by staff of the Office of Energy Projects on September 19, 2000, at 8:30 a.m., 888 First Street NE., Washington, DC. The purpose of this meeting is to discuss procedures for filing a joint amendment to the Pelton Round Butte applications. However, other issues may be discussed as time permits.

Any person wishing to attend or needing additional information should contact Nan Allen at (202) 219–2938 or e-mail at nan.allen@ferc.fed.us.

David P. Boergers,

Secretary.

[FR Doc. 00–23292 Filed 9–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–509–000]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2000.

Take notice that on August 31, 2000, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective March 27, 2000:

First Revised Sheet No. 398
First Revised Sheet No. 406
First Revised Sheet No. 412
First Revised Sheet No. 414

REGT states that the purpose of this filing is to remove tariff provisions inconsistent with the two-year waiver of the maximum rate ceiling for short-term capacity release transactions effected by Order No. 637.

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. 00–23286 Filed 9–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–526–000]

Sea Robin Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2000.

Take notice that on August 31, 2000, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet No. 58, to be effective October 1, 2000.

Sea Robin states that the purpose of this filing is to facilitate compliance with the Commission's Regulation of Short-Term Natural Gas Transportation Service, and Regulation of Interstate Natural Gas Transportation Services in Docket Nos. RM98–10–000 and RM98–12–000 issued on February 9, 2000, 90 FERC ¶ 61,109 (Order No. 637) and the revised reporting requirements in Section 161.3(1)(2) of the Commission's Regulations. Specifically, the proposed changes remove the shared operating personnel and facilities information from the tariff. Under the Commission's revised regulations this information will now be available on Sea Robin's Internet web site.

Sea Robin states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

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. 00–23299 Filed 9–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–514–000]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

September 6, 2000.

Take notice that on August 31, 2000, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following revised tariff sheets to become effective October 1, 2000:

Fourth Revised Sheet No. 101
Original Sheet No. 101A
Original Sheet No. 101B
First Revised Sheet No. 102
Original Sheet No. 102A
Second Revised Sheet No. 104
Third Revised Sheet No. 116
Fourth Revised Sheet No. 117

Southern states that the tariff sheets filed by Southern set forth the terms and conditions under which Southern proposes to implement a new method of awarding firm capacity on its system. Southern proposes to replace its first-come, first-served method with a net present value method (NPV). The NPV method will be based on objective criteria which Southern will be required to post.

Southern requests evaluated at the same time must be evaluated under the same criteria.

Southern states that it may have an open season or it may award requests as they are submitted or, if they are pending, it may use the NPV method to evaluate pending requests if capacity becomes available. Such tariff provisions shall apply to capacity that is or becomes available—not to expansion capacity. Southern may, however, reserve capacity that becomes available or is going to become available for an open season relating to an expansion.

If Southern reserves such capacity, it will pose such reservation on its website and it will not award that capacity unless it rescinds its reservation on the website. Such open season will be held the later of one year from the date of the reservation or one year from the date the capacity becomes available. In the event Southern holds an open season for the capacity, it may set a reserve price for the capacity. If it does not post the reserve price it must establish with a reputable third party that it set the reserve price prior to the open season unless it blinds the identity of the bids by having bidders submit the bids to the third party. If the identity of the bidders is unknown to Southern, then Southern may establish the reserve price after it views the bid prices.

Southern will continue to award Receipt Point changes on a first-come, first-served basis, but delivery point changes will be awarded in conjunction with the new NPV methodology. Both delivery point changes and receipt point changes will be designated a NPV of zero, unless other consideration is given.

In addition, as part of the net present value procedures, Southern is changing the timeframe in which executed contracts must be returned to Southern from thirty (30) days to five (5) days.

Southern has requested to place the new capacity award methodology into effect October 1, 2000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed 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. 00–23309 Filed 9–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–517–000]

Southwest Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2000.

Take notice that on August 31, 2000, Southwest Gas Storage Company (Southwest) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 142, to be effective October 1, 2000.

Southwest states that the purpose of this filing is to facilitate compliance with the Commission's Regulation of Short-Term Natural Gas Transportation Service, and Regulation of Interstate Natural Gas Transportation Services in Docket Nos. RM98–10–000 and RM98–12–000 issued on February 9, 2000, 90 FERC ¶ 61,109 (Order No. 637) and the revised reporting requirements in Section 161.3(1)(2) of the Commission's Regulations. Specifically, the proposed changes remove the shared operating personnel and facilities information from the tariff. Under the Commission's revised regulations this will now be available on Southwest's Internet web site.

Southwest states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

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. 00–23306 Filed 9–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–518–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2000.

Take notice that on August 31, 2000, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Ninth Revised Sheet No. 14, to become effective November 1, 2000.

Texas Gas states that the tariff sheet is being filed to establish a revised Effective Fuel Retention Percentage (EFRP) under the provisions of Section 16 ''Fuel Retention'' as found in the General Terms and Conditions of Texas Gas's FERC Gas Tariff, First Revised Volume No. 1. The revised EFRP may be in effect for the annual period November 1, 2000, through October 31, 2001. In general, the instant filing results in a minimal overall annual impact on most customers due to the fact each season and each zone of delivery has some EFRPs that increase and some that decrease from percentages charged during the last annual period.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional 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. 00–23305 Filed 9–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3262–000]

Trigen-Cholla LLC; Notice of Issuance of Order

September 6, 2000.

Trigen-Cholla LLC (Trigen-Cholla) submitted for filing a rate schedule under which Trigen-Cholla will engage in wholesale electric power and energy transactions at market-based rates. Trigen-Cholla also requested waiver of various Commission regulations. In particular, Trigen-Cholla requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Trigen-Cholla.

On August 22, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Trigen-Cholla should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Trigen-Cholla is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued

approval of Trigen-Cholla's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 21, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order 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. 00–23295 Filed 9–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–516–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2000.

Take notice that on August 31, 2000, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to be effective October 1, 2000:

Third Revised Sheet No. 2
First Revised Sheet No. 150
Fourth Revised Sheet No. 214

Trunkline states that the purpose of this filing is to facilitate compliance with the Commission's Regulation of Short-Term Natural Gas Transportation Service, and Regulation of Interstate Natural Gas Transportation Services in Docket Nos. RM98–10–000 and RM98–12–000 issued on February 9, 2000, 90 FERC ¶ 61,109 (Order No. 637) and the revised reporting requirements in Section 161.3(l)(2) of the Commission's Regulations. Specifically, the proposed changes remove the shared operating personnel and facilities information from the tariff. Under the Commission's revised regulations this information is available on Trunkline's Internet web site.

Trunkline states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

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. 00–23307 Filed 9–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–520–000]

Trunkline LNG Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2000.

Take notice that on August 31, 2000, Trunkline NLG Company (TLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1–A, Second Revised Sheet No. 108, to be effective October 1, 2000.

TLNG states that the purpose of this filing is to facilitate compliance with the Commission's Regulation of Short-Term Natural Gas Transportation Service, and Regulation of Interstate Natural Gas Transportation Services in Docket Nos. RM98–10–000 and RM98–12–000 issued on February 9, 2000, 90 FERC ¶ 61,109 (Order No. 637) and the revised reporting requirements in Section 161.3(1)(2) of the Commission's Regulations. Specifically, the proposed changes remove the shared operating personnel and facilities information from the tariff. Under the Commission's revised regulations this information will now be available on TLNG's Internet web site.

TLNG states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

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. 00–23304 Filed 9–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3315–000]

Westcoast Gas Service Delaware (America) Inc.; Notice of Issuance of Order

September 6, 2000.

Westcoast Gas Services Delaware (America) Inc. (Westcoast) submitted for filing a rate schedule under which Westcoast electric power and energy transactions at market-based rates. Westcoast also requested waiver of various Commission regulations. In particular, Westcoast requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Westcoast.

On August 03, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Westcoast should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Westcoast is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any

security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Westcoast's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 29, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistnace).

David P. Boergers,

Secretary.

[FR Doc. 00–23297 Filed 9–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–515–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2000.

Take notice that on August 31, 2000, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to become effective as indicated:

To Be Effective on March 27, 2000

First Revised Sheet No. 246
First Revised Sheet No. 250
First Revised Sheet No. 253
First Revised Sheet No. 254
First Revised Sheet No. 258
First Revised Sheet No. 259

To Be Effective on September 1, 2000

First Revised Sheet No. 227

Maritimes states that the purpose of this filing is to comply with the requirements of Order No. 637 regarding the waiver of the rate ceiling for short-term capacity release transactions and the prospective limitations on the availability of the Right-of-First-Refusal.

Maritimes states that copies of the filing were mailed to all affected 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, N.E., Washington, D.C. 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed 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. 00–23308 Filed 9–11–00; 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 and Protests

September 6, 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.:* 2047–004.

c. *Date filed:* June 23, 1998.

d. *Applicant:* Erie Boulevard Hydropower, L.P.

e. *Name of Project:* Stewarts Bridge Hydroelectric Project.

f. *Location:* On the Sacandaga River, about 3 miles upstream from the confluence with the Hudson River, in the town of Hadley, Saratoga County, New York. The project would not utilize federal funds.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* 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,* 202–219–2779.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

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 on 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.

k. *The project consists of the following existing facilities:* (1) a 1,860-foot-long dam consisting of: (a) a 1,646-foot-long rolled, compacted earth-fill structure 112 feet high at its highest point (crest elevation of 714.0 feet) with a base that varies from 120 feet to 680 feet in width; (b) a reinforced concrete Taintor gate spillway measuring 151 feet long, 49.7 feet wide, and 34 feet high, containing five 27-foot-long by 14.5-foot-high steel Taintor gates; (c) a 63-foot-long reinforced concrete intake structure equipped with two 25-foot-high by 22-foot-wide steel gates with 3⅝-inch clear spaced steel bar trashracks located directly in front of the gates; and (d) a 29-foot-wide roadway along the crest of the dam; (2) a reservoir (Stewart's Bridge Reservoir) with a surface area of 480 acres at a normal water surface elevation of 705.0 feet National Geodetic Vertical Datum; (3) a 10-foot-diameter, plugged diversion conduit used to pass river flows during project construction; (4) an 850-foot-long plastic concrete seepage barrier constructed through the impervious dam core; (5) a 216-foot-long, 22-foot inside diameter steel penstock; (6) an 88-foot-long by 78-foot-wide brick-faced structural steel framed powerhouse with one vertical Francis turbine/generator unit; (7) a tailrace which extends 450 feet downstream from the powerhouse; (8) an outdoor transformer, switching station, and 400-foot-long transmission line; and (9) appurtenant facilities. There is no bypassed reach. The project has an installed capacity of 30.0 megawatts and an annual average energy production of 118,678 megawatt hours.

The project currently operates as a peaking facility in tandem with the upstream E.J. West Project (P–2318), generating 12 hours a day (typically

between 8:00 AM to 10:00 PM). Daily reservoir fluctuations are less than one foot most of the year except for maintenance drawdowns that approach 15 feet and are timed to coincide with the drawdowns of Great Sacandaga Lake which begin in mid-March.

l. 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 *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.

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 filings 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 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. 00–23289 Filed 9–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

September 6, 2000.

Take notice that the following application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Amendment of license for the non-project use of project lands and waters: to allow the City of Columbus Water Works (CWW) to increase its average daily withdrawal of water from Lake Oliver for domestic and industrial consumption in the Columbus, Georgia region.

b. *Project No:* 2177–041

c. *Date Filed:* August 24, 2000

d. *Applicant:* Georgia Power Company

e. *Name of Project:* Middle Chattahoochee Project

f. *Location:* Muscogee County, Georgia

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:* Mr. Mike Phillips, Georgia Power Company, Bin 10151, 241 Ralph McGill Blvd. NE., Atlanta, GA 30308–3374, (404) 506–2392.

i. *FERC Contact:*Any questions on this notice should be addressed to Jim Haimes at (202) 219–2780, or e-mail address: james.haimes@ferc.fed.us

j. *Deadline for filing comments and or motions:* 30 days from the issuance date of this notice.

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.

Please include the project number (P–2177–041) on any comments or motions filed.

k. *Description of Project:* Georgia Power Company (GPC), licenses, requests Commission authorization to permit the CWW to increase the rate of water withdrawal at its existing pumping station at Lake Oliver reservoir from 31.5 million gallons per day (MGD) currently to 90.0 MGD, which is equivalent to 140 cubic feet per second. Existing pumps at the site are able to accommodate this increased water withdrawal; consequently, the proposed action would not involve any land-disturbing or new construction activities on project lands. Further, GPC requests that the Commission allow the licensee to recover from CWW adequate compensation for the electric energy and capacity value lost to GPC's hydroelectric developments as a consequence of CWW's water withdrawals from Lake Oliver.

l. *Locations of the application:* Copies of the application are 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 also may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. Copies of the application also are available for inspection and reproduction at the addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list for the proposed amendment of license should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, 214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Docments—Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''PROTEST,'' OR ''MOTION TO INTERVENE,'' as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative

of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–23291 Filed 9–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of Licenses and Soliciting Comments, Motions To Intervene, and Protests

September 6, 2000.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of Licenses.

b. *Project Nos.:* 2894–005, 9184–006, and 9185–005.

c. *Date Filed:* August 16, 2000.

d. *Applicants:* Northwestern Wisconsin Electric Company (transferor) and Flambeau Hydro, LLC (transferee).

e. *Name and Location of Projects:* The Black Brook Dam Project is on the Apple River in Polk County, Wisconsin. The Danbury Dam Project is on the Yellow River and the Clam River Dam Project is on the Clam River, both in Burnett County, Wisconsin. The projects do not occupy federal or tribal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts:* Mr. Mark F. Dahlberg, Northwestern Wisconsin Electric Company, P.O. Box 9, Grantsburg, WI 54840–0009, (715) 463–5371 and Mr. Donald H. Clarke, Wilkinson Barker Knauer, LLP, 2300 N Street NW., No. 700, Washington, DC 20037, (202) 783–4141.

h. *FERC Contact:* Any questions on this notice should be addressed to James Hunter at (202) 219–2839.

i. *Deadline for filing comments and or motions:* October 13, 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.

Please include the noted project numbers on any comments or motions filed.

j. *Description of Proposal:* The applicants state that the transfer will assure the continued operation of these hydroelectric projects and will effect the desired change of ownership of the generating facilities consistent with the restructuring plans of these members of the electric industry.

k. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–23293 Filed 9–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of Licenses, Substitution of Relicense Applicant, and Soliciting Comments, Motions To Intervene, and Protest

September 6, 2000.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Types:* (1) Transfer of Licenses and (2) Request for Substitution of Applicant for New License (in Project No. 2064–004).

b. *Project Nos:* 2064–005, 2684–005, and 2064–004.

c. *Date Filed:* August 16, 2000.

d. *Applicants:* North Central Power Co., Inc. (transferor) and Flambeau Hydro, LLC (transferee).

e. *Name and Location of Project:* The Winter and Arpin Dam Hydroelectric Projects are on the East Fork of the Chippewa River in Sawyer County, Wisconsin. The Winter Project occupies federal lands within the Chequamegon-Nicolet National Forest, but no tribal lands. The Arpin Dam Project does not occupy federal or tribal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts:* Mr. Mark F. Dahlberg, North Central Power Co., Inc., P.O. Box 167, Grantsburg, WI 54840, (715) 463–5371 and Mr. Donald H. Clarke, Wilkinson Barker Knauer, LLP, 2300 N Street NW, No. 700, Washington, DC 20037, (202) 783–4141.

h. *FERC Contact:* Any questions on this notice should be addressed to James Hunter at (202) 219–2839.

i. *Deadline for filing comments and or motions:* November 3, 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.

Please include the noted project numbers on any comments or motions filed.

j. *Description of Proposal:* The applicants state that the transfer will assure the continued operation of these renewable energy projects and will effect the desired change of ownership of the generating facilities consistent with the restructuring plans of these members of the electric industry.

The transfer application was filed within five years of the expiration of the license for Project No. 2064, which is the subject of a pending relicense application. In Hydroelectric Relicensing Regulations Under the Federal Power Act (54 Fed. Reg. 23,756; FERC Stats. and Regs., Regs. Preambles 1986–1990, 30,854 at p. 31,437), the Commission declined to forbid all license transfers during the last five years of an existing license, and instead indicated that it would scrutinize all such transfer requests to determine if the transfer's primary purpose was to give the transferee an advantage in relicensing (*id.* at p. 31,438 n. 318).

The transfer application also contains a separate request for approval of the substitution of the transferee for the transferor as the applicant in the pending relicensing application, filed by the transferor on November 26, 1999, in Project No. 2064–004.

k. *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 Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item g above.

1. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–23294 Filed 9–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

September 7, 2000.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: September 14, 2000, 2 p.m.

PLACE: Room 2C, 888 First Street, NE, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note: Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

747th—Meeting September 14, 2000, Regular Meeting (2:00 p.m.)

Consent Agenda—Markets, Tariffs and Rates—Electric

CAE–1.
- Docket# ER99–4392, 000, Southwest Power Pool, Inc.
- Other#s ER99–4392, 003, Southwest Power Pool, Inc.

CAE–2.
- Docket# ER00–718, 000 Tampa Electric Company
- Other#s ER00–718, 001, Tampa Electric Company

CAE–3.
- Docket# ER00–1534, 000, Ocean State Power, II
- Other#s ER00–1535, 000, Ocean State Power

CAE–4.
- Docket# ER00–2814, 000, Commonwealth Edison Company
- Other#s ER00–2814, 001, Commonwealth Edison Company

CAE–5.
- Docket# ER00–3300, 000, Northeast Power Coordinating Council

CAE–6.
- Docket# ER00–1053, 002, Maine Public Service Company
- Other#s ER00–1053, 000, Maine Public Service Company

CAE–7.
- Docket# ER00–1319, 003, Wisconsin Energy Corporation Operating Companies
- Other#s ER00–1319, 000, Wisconsin Energy Corporation Operating Companies

CAE–8.
- Docket# ER97–1523, 018, Central Hudson Gas & Electric Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and GAS Corporation, Niagara Mohawk Power Corporation and New York Power Pool
- Other#s OA97–470, 017, Central Hudson Gas & Electric Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation and New York Power Pool
- OA97–470, 040, Central Hudson Gas & Electric Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation and New York Power Pool
- ER97–1523, 042, Central Hudson Gas & Electric Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation and New York Power Pool

ER97–4234, 015, Central Hudson Gas & Electric Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation and New York Power Pool
ER97–4234, 038, Central Hudson Gas & Electric Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation and New York Power Pool
CAE–9.
Docket# ER99–4323, 000, Pacific Gas and Electric Company
Other#s ER99–4323, 001, Pacific Gas and Electric Company
CAE–10.
Docket# ER00–612, 000, Ameren Operating Companies
CAE–11.
Docket# ER97–1523, 045, Central Hudson Gas & Electric Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporaton and New York Power Pool
Other#s ER97–4234, 041, Central Hudson Gas & Electric Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporaton and New York Power Pool
OA97–470, 043, Central Hudson Gas & Electric Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric corporation, Consolidated Edison Company of New York, Inc., long island lighting company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation and New York Power Pool
CAE–12.
Docket# ER97–1523, 043, Central Hudson Gas & Electric Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation and New York Power Pool
Other#s OA97–470, 041, Central Hudson Gas & Electric Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation and New York Power Pool
ER97–4234, 039, Central Hudson Gas & Electric Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation and New York Power Pool
CAE–13.
Docket# ER00–1026, 003, Indianapolis Power & Light Company
Other#s ER00–1026, 000, Indianapolis Power & Light Company
CAE–14.
Docket# ER99–2339, 004, Sierra Pacific Power Company
Other#s ER99–2339, 000, Sierra Pacific Power Company
CAE–15.
Docket# ER00–2003, 001, Sierra Pacific Power Company
Other# ER00–2003, 000, Sierra Pacific Power Company
CAE–16.
Docket# ER93–465, 001, Florida Power & Light Company
Other#s EL93–28, 000, Florida Power & Light Company
EL93–28, 001, Florida Power & Light Company
EL93–28, 002, Florida Power & Light Company
EL93–28, 003, Florida Power & Light Company
EL93–28, 004, Florida Power & Light Company
EL93–28, 005, Florida Power & Light Company
EL93–28, 006, Florida Power & Light Company
EL93–28, 007, Florida Power & Light Company
EL93–28, 008, Florida Power & Light Company
EL93–40, 000, Florida Power & Light Company
EL93–40, 001, Florida Power & Light Company
EL93–40, 002, Florida Power & Light Company
EL93–40, 003, Florida Power & Light Company
EL93–40, 004, Florida Power & Light Company
EL93–40, 005, Florida Power & Light Company
EL93–40, 006, Florida Power & Light Company
EL93–40, 007, Florida Power & Light Company
EL93–40, 008, Florida Power & Light Company
ER93–465, 000, Florida Power & Light Company
ER93–465, 002, Florida Power & Light Company
ER93–465, 003, Florida Power & Light Company
ER93–465, 004, Florida Power & Light Company
ER93–465, 005, Florida Power & Light Company
ER93–465, 006, Florida Power & Light Company
ER93–465, 007, Florida Power & Light Company
ER93–465, 008, Florida Power & Light Company
ER93–465, 009, Florida Power & Light Company
ER93–465, 010, Florida Power & Light Company
ER93–465, 011, Florida Power & Light Company
ER93–465, 012, Florida Power & Light Company
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ER93–465, 023, Florida Power & Light Company
ER93–465, 024, Florida Power & Light Company
ER93–465, 025, Florida Power & Light Company
ER93–465, 026, Florida Power & Light Company
ER93–507, 000, Florida Power & Light Company
ER93–507, 001, Florida Power & Light Company
ER93–507, 002, Florida Power & Light Company
ER93–507, 003, Florida Power & Light Company
ER93–507, 004, Florida Power & Light Company
ER93–507, 005, Florida Power & Light Company
ER93–507, 006, Florida Power & Light Company
ER93–507, 007, Florida Power & Light Company
ER93–922, 000, Florida Power & Light Company
ER93–922, 001, Florida Power & Light Company
ER93–922, 002, Florida Power & Light Company
ER93–922, 003, Florida Power & Light Company
ER93–922, 004, Florida Power & Light Company
ER93–922, 005, Florida Power & Light Company
ER93–922, 006, Florida Power & Light Company
ER93–922, 007, Florida Power & Light Company
ER93–922, 008, Florida Power & Light Company
ER93–922, 009, Florida Power & Light Company
ER93–922, 010, Florida Power & Light Company
ER93–922, 011, Florida Power & Light Company

ER93–922, 012, Florida Power & Light Company
ER93–922, 013, Florida Power & Light Company
EC94–12, 000, Florida Power & Light Company
EL94–12, 001, Florida Power & Light Company
EL94–12, 002, Florida Power & Light Company
EL94–12, 003, Florida Power & Light Company
EL94–12, 005, Florida Power & Light Company
EL94–12, 006, Florida Power & Light Company
EL94–12, 007, Florida Power & Light Company
EL94–12, 008, Florida Power & Light Company
EL94–28, 000, Florida Power & Light Company
EL94–28, 001, Florida Power & Light Company
EL94–28, 002, Florida Power & Light Company
EL94–28, 003, Florida Power & Light Company
EL94–28, 004, Florida Power & Light Company
EL94–28, 005, Florida Power & Light Company
EL94–28, 006, Florida Power & Light Company
EL94–47, 000, Florida Power & Light Company
EL94–47, 001, Florida Power & Light Company
EL94–47, 002, Florida Power & Light Company
EL94–47, 003, Florida Power & Light Company
EL94–47, 004, Florida Power & Light Company
EL94–47, 005, Florida Power & Light Company
EL94–47, 006, Florida Power & Light Company
OA96–39, 000, Florida Power & Light Company
OA96–39, 001, Florida Power & Light Company
OA96–39, 002, Florida Power & Light Company
OA96–39, 003, Florida Power & Light Company
ER96–417, 000, Florida Power & Light Company
ER96–1375, 000, Florida Power & Light Company
ER96–1375, 001, Florida Power & Light Company
ER96–2381, 000, Florida Power & Light Company
ER96–2381, 001, Florida Power & Light Company
OA97–245, 000, Florida Power & Light Company
DR98–24, 000, Florida Power & Light Company
EL99–69, 000, Florida Power & Light Company
EL99–69, 001, Florida Power & Light Company
ER99–723, 000, Florida Power & Light Company ER99–723, 001, Florida Power & Light Company ER99–723, 002, Florida Power & Light Company ER99–2770, 000, Florida Power & Light Company ER99–2770, 001, Florida Power & Light Company ER99–2770, 002, Florida Power & Light Company ER00–13, 000, Florida Power & Light Company

CAE–17.
Omitted

CAE–18.
Omitted

CAE–19.
Omitted

CAE–20.
Docket# EL00–92, 000, North Central Missouri Electric Cooperative, Inc.

CAE–21.
Docket# EL00–93, 000, Midland Cogeneration Venture Limited Partnership

CAE–22.
Docket# EL00–87, 000, Fresno Cogeneration Partners, L.P.
Other#s QF88–134, 002, Fresno Cogeneration Partners, L.P.

CAE–23.
Omitted

CAE–24.
Docket# EL00–88, 000, Allegheny Electric Cooperative, Inc. v. Pennsylvania Electric Company

CAE–25.
Docket# OA97–163, 011, Mid-Continent Area Power Pool
Other#s OA97–658 011 Mid-Continent Area Power Pool; ER97–1162, 010, Mid-Continent Area Power Pool

CAE–26.
Docket# ER00–3214, 000, Pacific Gas & Electric Company

Consent Agenda—Markets, Tariffs and RateS—Gas

CAG–1.
Docket# RP99–190, 002, National Fuel Gas Distribution Corporation

CAG–2.
Docket# RP00–455, 000, Honeoye Storage Corporation

CAG–3.
Omitted

CAG–4.
Omitted

CAG–5.
Docket# RP99–351, 000, Florida Gas Transmission Company

CAG–6.
Docket# RP00–169, 000, Natural Gas Pipeline Company of America

CAG–7.
Docket# RP00–249, 000, Transwestern Pipeline Company
Other#s RP00–249, 001, Transwestern Pipeline Company

CAG–8.
Docket# RP00–430, 000, Norteno Pipeline Company

CAG–9.
Omitted

CAG–10.
Docket# RP00–316, 001, Kinder Morgan Interstate Gas Transmission LLC

CAG–11.
Docket# PR00–14, 001, Aim Pipeline, LLC
Other# PR00–14, 000, Aim Pipeline, LLC

CAG–12.
Docket# PR00–3, 000, Creole Gas Pipeline Corporation
Other#s PR00–3 001 Creole Gas Pipeline Corporation

CAG–13.
Docket# RP00–205, 002, PG&E Gas Transmission, Northwest Corporation
Other#s RP00–205, 000, PG&E Gas Transmission, Northwest Corporation; RP00–205, 003, PG&E Gas Transmission, Northwest Corporation

CAG–14.
Omitted

CAG–15.
Docket# CP96–152, 027, Kansas Pipeline Company
Other#s RP99–485, 000, Kansas Pipeline Company

CAG–16.
Docket# RP97–284, 002, Southern California Edison Company v. Southern California Gas Company
Other#s RP97–284, 000, Southern California Edison Company v. Southern California Gas Company

Consent Agenda—Miscellaneous CAM–1.

Docket# RM00–12, 000, Electronic Filing of Documents

Consent Agenda—Energy Projects—Hydro

CAH–1.
Docket# P–2543, 046, Montana Power Company

CAH–2.
Docket# P–10703, 039, City of Centralia, Washington, Light Department

CAH–3.
Docket# P–2188, 030, PP&L Montana, LLC

CAH–4.
Docket# P–11828, 000, Universal Electric Power Corporation

CAH–5.
Docket# HB02–00–1, 000, Public Utility District No. 1 of Chelan County, Washington, Eugene Water and Electric Board, City of Seattle, Washington, Public Utility District No. 2 of Grant County, Washington, Public Utility District No. 1 of Pend Oreille County, Washington, Public Utility District No. 1 of Douglas County, Washington, Portland General Electric Company, Avista Corporation and PP&L Montana, LLC

Consent Agenda—Energy Projects—Certificates

CAC–1.
Docket# CP00–129, 000, Horizon Pipeline Company, L.L.C.
Other#s CP00–130, 000, Horizon Pipeline Company, L.L.C.; CP00–131 000 Horizon Pipeline Company, L.L.C.; CP00–132 000 Natural Gas Pipeline Company of America

CAC–2.
Docket# CP00–59, 000, Petal Gas Storage, L.L.C.
Other#s CP00–59, 001, Petal Gas Storage, L.L.C.

CAC–3.
Docket# CP99–21, 003, Northern Border Pipeline Company

CAC–4.
Docket# CP98–49, 005, KN Wattenberg Transmission Limited Liability Company

CAC–5.

Omitted
CAC–6.
Docket# GP00–1, 000, Williams Energy Marketing & Trading Company
CAC–7.
Docket# CP95–168, 003, Sea Robin Pipeline Company

Energy Projects—Hydro Agenda

H–1.
Reserved

Energy Projects—Certificates Agenda

C–1.
Reserved

Markets, Tariffs and Rates—Electric Agenda

E–1.
Reserved

Markets, Tariffs and Rates—Gas Agenda

G–1.
Reserved

David P. Boergers,

Secretary.

[FR Doc. 00–23474 Filed 9–8–00; 11:10 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6868–2]

The National Advisory Council for Environmental Policy and Technology, (NACEPT) Standing Committee on Sectors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory NACEPT Standing Committee on Sectors Meeting; open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Standing Committee on Sectors will meet on the date and time described below. The meeting is open to the public. Seating at the meeting will be a first-come basis and limited time will be provided for public comment. For further information concerning this meeting, please contact the individual listed with the announcement below.

NACEPT Standing Committee on Sectors; September 27–28, 2000

Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the NACEPT Standing Committee on Sectors on Wednesday, September 27, 2000 from 9 am–5 pm, and Thursday, September 28, 2000 from 8:30 am–12 pm. The meeting will be held at RESOLVE, Suite 275, 1255 23rd St., NW., Washington, DC 20037, phone (202) 965–6387.

The agenda for the meeting will be focused primarily on discussion and endorsement of a 5-yr Sector Program Plan. Public comment is planned for 4:45 pm on September 27. A final Agenda can be obtained at the meeting, or by contacting the Designated Federal Officer, as noted below.

SUPPLEMENTARY INFORMATION: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, Public Law 92463. NACEPT provides advice and recommendations to the Administrator and other EPA officials on a broad range of domestic and international environmental policy issues. NACEPT consists of a representative cross-section of EPA's partners and principal constituents who provide advice and recommendations on policy issues and serve as a sounding board for new strategies that the Agency is developing.

In follow-up to completion of work by EPA's Common Sense Initiative (CSI) Council, the Administrator asked NACEPT to create a Standing Committee on Sectors. This Committee began its work in March 1999 and provides a multi-stakeholder forum through which the Agency can continue to receive advice and recommendations on sector-based approaches to environmental protection. (A sector is generally defined a discrete production system of the economy, *e.g.,* petroleum refining, printing, metal finishing.) Further information on sectors is available electronically on our web site at http.//www.epa.gov/sectors.

For further information concerning the NACEPT Standing Committee on Sectors, including the upcoming meeting, contact Kathleen Bailey, Designated Federal Officer (DFO), on (202) 260–3413, or E-mail: bailey.kathleen@epa.gov.

Inspection of Subcommittee Documents: Documents relating to the above topics will be publicly available at the meeting. Thereafter, key documents and the minutes of the meeting will be available electronically on the web site, or by calling the DFO.

Dated: September 6, 2000.

Robert S. Benson,

Acting Designated Federal Officer.

[FR Doc. 00–23377 Filed 9–11–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6868–1]

Kopper's (Florence Plant) Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a settlement with the Beazer East Incorporated for response costs pursuant to section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h)(1) concerning the Koppers (Florence Plant) Superfund Site located in Florence, Florence County, South Carolina. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4 (WMD–PSB), 61 Forsyth Street SW, Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: August 30, 2000.

Franklin E. Hill,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 00–23374 Filed 9–11–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

September 7, 2000.

Open Commission Meeting; Thursday, September 14, 2000

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, September 14, 2000, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Mass Media	Title: Extension of the Filing Requirement for Children's Television Programming Reports, (FCC Form 398), (MM Docket No. 00–44). Summary: The Commission will consider a Report and Order, and Further Notice of Proposed Rule Making regarding the extension of the requirement that television broadcasters file children's television programming reports (FCC Form 398).
2	Mass Media	Title: Children's Television Obligations of Digital Television Broadcasters. Summary: The Commmission will consider a Notice of Proposed Rule Making regarding television broadcasters' obligation to serve children as they transition to digital transmission technology.
3	Mass Media	Title: Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations. Summary: The Commission will consider a Notice of Proposed Rule Making concerning standardizing and enhancing information provided to the public on how broadcast television stations serve the public interest.
4	Cable Services	Title: Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices (CS Docket No. 97–80). Summary: The Commission will consider a Further Notice of Proposed Rule Making and Declaratory Ruling regarding the navigation devices rules.
5	Office of plans and policy	Title: Compatibility Between Cable Systems and Consumer Electronics Equipment (PP Docket No. 00–67). Summary: The Commission will consider a Report and Order concerning compatibility between cable systems and consumer electronics equipment.
6	Wireless Telecommunications	Title: Promotion of Competitive Networks in Local Telecommunications Markets (WT Docket No. 99–217); Wireless Communications Association International, Inc., Petition for Rule Making to Amend Section 1.4000 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed to Provide Fixed Wireless Services; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (CC Docket No. 96–98); and Review of Sections 68.104, and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to Telephone Network (CC Docket No. 88–57). Summary: The Commission will consider a First Report and Order and Further Notice of Proposed Rule Making in WT Docket No. 99-217, a Fourth report and Order and Memorandum Opinion and Order in CC Docket No. 96–98, and a Memorandum Opinion and Order in CC Docket No. 88–57), regarding obstacles to consumer's choice of telecommunications providers in multiple tenant environments.
7.	Common Carrier, Cable Services, Office of Engineering and Technology, and Office of Plans and Policy.	Title: Inquiry Concerning Intermodal Competition Between Providers of High-Speed Services. Summary: The Commission will consider a Notice of Inquiry concerning issues surrounding high-speed services provided to subscribers over different technologies and to determine what legal and policy framework should apply to high-speed cable access technologies.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its_inc@ix.netcom.com. Their internet address is http://www.itsdocs.com/.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2111 fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–23494 Filed 9–8–00; 12:00 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, September 12, 2000 at 2:00 p.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

2000 General Election Entitlement of $12,613,452 for Patrick J. Buchanan and Ezola Foster.

2000 General Election Entitlement for John Hagelin and Nat Goldhaber.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 00–23493 Filed 9–8–00; 11:59 am]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1341–DR]

Idaho; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Idaho (FEMA–1341–DR), dated September 1, 2000, and related determinations.

EFFECTIVE DATE: September 1, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 1, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Idaho, resulting from wildfires on July 27, 2000, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Idaho.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is later warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint William Lokey of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Idaho to have been affected adversely by this declared major disaster:

The counties of Bannock, Boise, Clearwater, Elmore, Idaho, Jerome, Lemhi, Lewis, and Power, and the Fort Hall Indian Reservation for Individual Assistance.

All counties within the State of Idaho are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–23352 Filed 9–11–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1340–DR]

Montana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Montana (FEMA–1340–DR), dated August 30, 2000, and related determinations.

EFFECTIVE DATE: August 30, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 30, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Montana, resulting from wildfires on July 13, 2000 and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Montana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Carlos Mitchell of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Montana to have been affected adversely by this declared major disaster:

The counties of Beaverhead, Broadwater, Carbon, Cascade, Deer Lodge, Flathead, Gallatin, Glacier, Granite, Jefferson, Judith Basin, Lake, Lewis and Clark, Lincoln, Madison, Meagher, Mineral, Missoula, Park, Pondera, Powell, Ravalli, Sanders, Silver Bow, Stillwater, Sweet Grass, Teton, and Wheatland for Individual Assistance.

The Blackfeet Indian Reservation and Flathead Indian Reservation for Individual Assistance.

All counties within the State of Montana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–23351 Filed 9–11–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1337–DR]

New Jersey; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New Jersey (FEMA–1337–DR), dated August 17, 2000, and related determinations.

EFFECTIVE DATE: August 30, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 21, 2000.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–23350 Filed 9–11–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: 11:00 a.m., Monday, September 18, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: September 8, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–23544 Filed 9–8–00; 3:22 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1226]

Agency Information Collection Activities; Announcement of OMB Approval; Investigational Device Exemptions, Reports, and Records

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Investigational Device Exemptions, Reports, and Records'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 6, 2000 (65 FR 41676), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0078. The approval expires on August 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: September 5, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–23327 Filed 9–11–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1311]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Export of Medical Devices—Foreign Letters of Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by October 12, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA 250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Export of Medical Devices—Foreign Letters of Approval—Federal Food, Drug, and Cosmetic Act—21 U.S.C. 381(e)(2) (OMB Control No. 0910 0264)—Extension

Section 801(e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381(e)(2)) provides for the exportation of an unapproved device under certain circumstances if the exportation is not contrary to the public health and safety and it has the approval of the foreign country to which it is intended for export.

Requesters communicate (either directly or through a business associate in the foreign country) with a representative of the foreign government to which they seek exportation, and written authorization must be obtained from the appropriate office within the foreign government approving the importation of the medical device. FDA uses the written authorization from the foreign country to determine whether the foreign country has any objection to the importation of the device into their country.

The respondents to this collection of information are companies that seek to export medical devices.

In the **Federal Register** of June 20, 2000 (65 FR 38288), the agency requested comments on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

Statute	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Section 801(e)(2) of the Federal Food, Drug, and Cosmetic Act	20	1	20	2.5	50
Total					50

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on the experience of FDA's medical device program personnel, who estimate that completion of the requirements of this collection of information should take approximately 2.5 hours to complete. Prior to the enactment of the Food and Drug Export Reform and Enhancement Act of 1996, FDA received approximately 800 requests from U.S. firms to export medical devices under section 801(e)(2) of the act. The enactment of the Food and Drug Export Reform and Enhancement Act of 1996 has greatly reduced the number of export permit requests made to the present estimated 20 per year.

Dated: September 5, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–23326 Filed 9–11–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Panels or Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on certain device panels of the Medical Devices Advisory Committee and the National Mammography Quality Assurance Advisory Committee in the Center for Devices and Radiological Health (CDRH). Nominations will be accepted for current vacancies and those that will or may occur through August 31, 2001.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for the receipt of nominations. However, when possible, nominations should be received at least 6 months before the date of scheduled vacancies for each year, as indicated in this notice.

ADDRESSES: All nominations and curricula vitae for the device panels should be sent to Nancy J. Pluhowski, Advisory Panel Coordinator, Office of Device Evaluation (HFZ–400), CDRH, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850.

All nominations and curricula vitae for the National Mammography Quality Assurance Advisory Committee, excluding consumer representatives, should be sent to Charles A. Finder, CDRH (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850.

All nominations and curricula vitae for consumer representatives for the National Mammography Quality Assurance Advisory Committee should be sent to Mary C. Wallace, Office of Consumer Affairs (HFE–3), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Walker, CDRH (HFZ–17), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1283, ext. 114, (KLW@CDRH.FDA.GOV).

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of voting members for vacancies listed below.

1. *Anesthesiology and Respiratory Therapy Devices Panel:* Three vacancies occurring November 30, 2000; anesthesiologists, pulmonary medicine specialists, or other experts who have specialized interests in ventilatory support, pharmacology, physiology, or the effects and complications of anesthesia.

2. *Circulatory System Devices Panel:* Three vacancies immediately, two vacancies occurring June 30, 2001; interventional cardiologists, electrophysiologists, invasive (vascular) radiologists, vascular and cardiothoracic surgeons, and cardiologists with special interest in congestive heart failure.

3. *Dental Products Panel:* Two vacancies occurring October 31, 2000; dentists who have expertise in the areas of lasers, temporomandibular joint implants and/or endodontics; or experts in tissue engineering and/or bone physiology relative to the oral and maxillofacial area.

4. *Ear, Nose, and Throat Devices Panel:* One vacancy immediately, two vacancies occurring October 31, 2000; audiologists, otolaryngologists, neurophysiologists, statisticians, or electrical or biomedical engineers.

5. *Gastroenterology and Urology Devices Panel:* One vacancy immediately, two vacancies occurring December 31, 2000; nephrologists with expertise in diagnostic and therapeutic management of adult and pediatric patient populations.

6. *General and Plastic Surgery Devices Panel:* One vacancy immediately, two vacancies occurring August 31, 2001; general surgeons, plastic surgeons, biomaterials experts, laser experts, wound healing experts or endoscopic surgery experts.

7. *General Hospital and Personal Use Devices Panel:* Two vacancies immediately, two vacancies occurring December 31, 2000; internists, pediatricians, neonatologists, gerontologists, nurses, biomedical engineers or microbiologists/infection control practitioners or experts.

8. *Hematology and Pathology Devices Panel:* Two vacancies immediately, one vacancy occurring February 28, 2001; cytopathologists and histopathologists, hematologists (blood banking, coagulation and hemostasis), molecular biologists (nucleic acid amplification techniques), and hematopathologists (oncology).

9. *Immunology Devices Panel:* Two vacancies occurring February 28, 2001; persons with experience in medical, surgical, or clinical oncology, internal medicine, clinical immunology, allergy, molecular diagnostics, or clinical laboratory medicine.

10. *Microbiology Devices Panel:* Two vacancies occurring February 28, 2001; infectious disease clinicians, e.g., pulmonary disease specialists, sexually transmitted disease specialists, pediatric infectious disease specialists; clinical microbiologists; clinical microbiology laboratory directors, clinical virologists with expertise in clinical diagnosis and in vitro diagnostic assays, e.g., hepatologists; molecular biologists; and clinical oncologists experienced with antitumor resistance and susceptibility.

11. *Neurological Devices Panel:* Two vacancies occurring November 30, 2000; neurologists with experience in pain management and the treatment of movement disorders, neurosurgeons with experience in pediatric and stereotactic neurosurgery, interventional neuroradiologists, biomedical engineers, or biostatisticians with interest in neurological devices.

12. *Obstetrics and Gynecology Devices Panel:* Two vacancies occurring January 31, 2001; experts in reproductive endocrinology, endoscopy, electrosurgery, laser surgery, assisted reproductive technologies, and contraception; biostatisticians and engineers with experience in obstetrics/gynecology devices; urogynecologists; experts in breast care; and experts in gynecology in the older patient.

13. *Ophthalmic Devices Panel:* Three vacancies occurring October 31, 2000; ophthalmologists specializing in refractive surgery, vitreo-retinal surgery, and the treatment of glaucoma; vision scientists, electrophysiologists and optometrists.

14. *Orthopaedic and Rehabilitation Devices Panel:* One vacancy immediately; one vacancy occurring August 31, 2000; five vacancies occurring August 31, 2001; doctors of medicine or philosophy with experience in tissue engineering, calcification or biomaterials; orthopedic surgeons experienced with prosthetic ligament devices, joint implants, or spinal instrumentation; physical therapists experienced in spinal cord injuries, neurophysiology, electrotherapy, and joint biomechanics; rheumatologists; or biomedical engineers.

15. *Radiological Devices Panel:* One vacancy occurring January 31, 2001; physicians and scientists with expertise in nuclear medicine, diagnostic or therapeutic radiology, radiation physics, mammography, thermography, transillumination, hyperthermia cancer therapy, bone densitometry, magnetic resonance, computed tomography, or ultrasound.

16. *National Mammography Quality Assurance Advisory Committee:* One vacancy immediately; six vacancies occurring January 31, 2001; five shall include physicians, practitioners, and other health professionals whose clinical practice, research specialization, or professional expertise include a significant focus on mammography; and two shall include consumer representatives from among national breast cancer or consumer health organizations with expertise in mammography.

Functions

Medical Devices Advisory Committee

The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation. The panels engage in a number of activities to fulfill the functions the Federal Food, Drug, and Cosmetic Act (the act) envisions for device advisory panels. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, advises the Commissioner of Food and Drugs (the Commissioner) regarding recommended classification or reclassification of devices into one of three regulatory categories; advises on any possible risks to health associated with the use of devices; advises on formulation of product development protocols; reviews premarket approval applications for medical devices; reviews guidelines and guidance documents; recommends exemption of certain devices from the application of portions of the act; advises on the necessity to ban a device; and responds to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

The Dental Products Panel also functions at times as a dental drug panel. The functions of the dental drug panel are to evaluate and recommend whether various prescription drug products should be changed to over-the-counter status and to evaluate data and make recommendations concerning the approval of new dental drug products for human use.

The Medical Devices Dispute Resolution Panel provides advice to the Commissioner on complex or contested scientific issues between the FDA and medical device sponsors, applicants, or manufacturers relating to specific products, marketing applications, regulatory decisions and actions by FDA, and agency guidance and policies. The panel makes recommendations on issues that are lacking resolution, are highly complex in nature, or result from challenges to regular advisory panel proceedings or agency decisions or actions.

National Mammography Quality Assurance Advisory Committee

The functions of the committee are to advise FDA on: (1) Developing appropriate quality standards and regulations for mammography facilities; (2) developing appropriate standards and regulations for bodies accrediting mammography facilities under this program; (3) developing regulations with respect to sanctions; (4) developing procedures for monitoring compliance with standards; (5) establishing a mechanism to investigate consumer complaints; (6) reporting new developments concerning breast imaging which should be considered in the oversight of mammography facilities; (7) determining whether there exists a shortage of mammography

facilities in rural and health professional shortage areas and determining the effects of personnel on access to the services of such facilities in such areas; (8) determining whether there will exist a sufficient number of medical physicists after October 1, 1999; and (9) determining the costs and benefits of compliance with these requirements.

Qualifications

Panels of the Medical Devices Advisory Committee

Persons nominated for membership on the panels shall have adequately diversified experience appropriate to the work of the panel in such fields as clinical and administrative medicine, engineering, biological and physical sciences, statistics, and other related professions. The nature of specialized training and experience necessary to qualify the nominee as an expert suitable for appointment may include experience in medical practice, teaching, and/or research relevant to the field of activity of the panel. The particular needs at this time for each panel are shown above. The term of office is up to 4 years, depending on the appointment date.

National Mammography Quality Assurance Advisory Committee

Persons nominated for membership should be physicians, practitioners, and other health professionals, whose clinical practice, research specialization, or professional expertise include a significant focus on mammography and individuals identified with consumer interests. Prior experience on Federal public advisory committees in the same or similar subject areas will also be considered relevant professional expertise. The particular needs are shown above. The term of office is up to 4 years, depending on the appointment date.

Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory panels or advisory committees. Self-nominations are also accepted. Nominations shall include a complete curriculum vitae of each nominee, current business address and telephone number, and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

Consumer Representatives

Any interested person may nominate one or more qualified persons as a member of a particular advisory committee to represent consumer interests as identified in this notice. To be eligible for selection, the applicant's experience and/or education will be evaluated against Federal civil service criteria for the position to which the person will be appointed.

Selection of members representing consumer interests is conducted through procedures that include use of a consortium of consumer organizations that has the responsibility for recommending candidates for the agency's selection. Candidates should possess appropriate qualifications to understand and contribute to the committee's work.

Nominations shall include a complete curriculum vita of each nominee and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest. The nomination should state whether the nominee is interested only in a particular advisory committee or in any advisory committee. The term of office is up to 4 years, depending on the appointment date.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: September 1, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–23325 Filed 9–11–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifiers: HCFA–R–267 (OMB #0938–0753)]

Intent of Clearance: Public Information Collection Meeting To Discuss Requirements To Be Submitted to the Office of Management and Budget (OMB)

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, in the near future, the Health Care Financing Administration (HCFA), Department of Health and Human Services (DHHS), will be submitting to the Office of Management and Budget (OMB) a request for review of the proposed Appeals Data Collections System for Managed Care Organizations (M+COs)

In order to seek public input at this early juncture and before we seek approval for this information collection from OMB, HCFA will be holding a town hall meeting to discuss the goals of the proposed Appeals Data Collection System for M+COs, issues that may surround it, and the required data elements associated with it.

Interested persons are invited to participate in a public discussion about various aspects of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Dates: The meeting is scheduled for September 25, 2000 from 10 a.m. until 4 p.m., E.D.T.

Persons Interested in Attending or Requesting More Information Should Contact

Brandon Bush, (410) 786–0028 (*Bbush@HCFA.GOV*) Project Coordinator; John Burke , (410) 786–1325 (*JBurke1@HCFA.GOV*) PRA Reports Clearance Officer.

SUPPLEMENTARY INFORMATION:

Background

At present, we capture data on ''plan level'' appeal activities at the Medicare $^{+}$ Choice Organizations (M^{+}COs), namely those managed care appeals not resolved at the M^{+}CO level and which

have automatically proceeded to a higher level of review by HCFA's independent contractor. We do not yet capture data on plans' internal appeal activity. Therefore, since our current data collection efforts represent only a portion of a M+CO's total appeal activity, it is insufficient to (1) assess plans' performance and provide feedback for improvement of their appeals process; and (2) review ''enrollee-specific'' appeal trends. (3) allow beneficiaries to make plan to plan comparisons based on the depth of sufficient data.

Through Operational Policy Letters (O.P.Ls) and **Federal Register** notices as well as industry association and beneficiary group meetings, we have made clear our intent to implement a data collection system to which M+COs will be required to periodically submit their appeal activity. Prior to finalizing the design of the data collection system, we are interested in validating our requirements of M+COs through a public process involving those who will use the information (for example, beneficiaries, M+COs, researchers, other purchasers, the public, and us). This public venue will afford us the opportunity to educate the users about our efforts to assist beneficiaries in making informed decisions when choosing plans. It will also serve to educate participants about the breadth of data that can be collected , and to receive input on data to be collected.

Agenda

The meeting will begin at 10 a.m. with an introduction to the system. We will give an overview to the participants of the proposed data elements to be considered. Informational booklets and writing materials will be provided at the meeting.

After the introduction and initial discussion, participants will be able to break up into four groups, which will be led by facilitators and employees of our staff to review the elements and discus concerns. The information gathered in these sessions will then be shared and discussed with the group as a whole. Afterwards, the participants will again break up into four separate groups for one last session, which will be shared and discussed with the entire group.

At the conclusion of the meeting we will provide a summary of the meeting, discussions and recommendations for data elements.

Dated: September 8, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Health Care Financing Administration.

[FR Doc. 00–23495 Filed 9–8–00; 12:16 pm]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; National Survey of Nonhuman Primate Research Use

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Center for Research Resources (NCRR), the National Institutes of Health (NIH) will publish periodic summaries of proposed project to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: The National Survey of Nonhuman Primate Research Use. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* The National Center for Research Resources (NCRR) seeks to evaluate the support that it provides investigators for scientific research involving nonhuman primates. NCRR wants to ensure that the NIH support structure for nonhuman primate research permits all investigators with meritorious research proposals to have access to scarce animal and specimen resources. NCRR will collect information using an Internet survey. The online survey will be implemented using SSL (Secure Socket Layer) encryption technology and password access. NCRR will use first-class mail and e-mail messages to advise investigators that they have been selected to participate in the survey. *Frequency of Response:* One time survey. *Affected Public:* Not-for-profit institutions. *Type of Respondents:* NIH-supported investigators. The annual reporting burden is as follows: *Estimated Number of Respondents:* 878; *Estimated Number of Responses per Respondent:* 1; *Estimated Burden Hours Per Response:* 30; *Estimated Total Annual Burden Hours:* 439. The annualized cost to respondents is estimated at $178,588. There are no Capital Cost, Operating Cost and/or Maintenance Costs to report.

Requests for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) The accuracy of the agency's estimate of the burden (including hours and cost) of the proposed information collection; (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 or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Patricia Newman, Program Analyst, NCRR Office of Science Policy, 6705 Rockledge Drive, Suite 5046, Bethesda, MD 20892–7965, or call non-toll-free number (301) 435–0866 or E-mail your request, including your address to: *PattyV@ncrr.nih.gov*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: August 31, 2000.

Louise E. Ramm,

Deputy Director, NCRR.

[FR Doc. 00–23314 Filed 9–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the Cancer Advisory Panel for Complementary and Alternative Medicine (CAPCAM).

The meeting is open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the

Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, for the discussions of individual patient information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cancer Advisory Panel for Complementary and Alternative Medicine.

Date: September 18, 2000.

Open: 1:00 pm to adjournment.

Agenda: The agenda will include a report on clinical trial data on Virulizen (R) use for pancreatic cancer, an update on NIH initiatives for CAM and Cancer treatments, and other business of the Panel.

Closed: 8:30 am to 11:30 am.

Agenda: To discuss individual patient information.

Place: Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, MD.

Contact Person: Richard Nahin, Ph.D., Executive Secretary, National Center for Complementary & Alternative Medicine, National Institutes of Health, 9000 Rockville Pike, Room 5B36, Bethesda, MD 20892, 301–496–4792.

The public comments session is scheduled from 4:30 pm to 5:00 pm. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Richard Nahin, National Center for Complementary and Alternative Medicine, NIH, 31 Center Drive, (MSC 2182), Building 31, Room 5B36, Bethesda, Maryland, 20892, 301–496–4792, Fax 301–402–4741. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5:00 pm on September 13, 2000. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits. and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Nahin at the address listed above up to ten calendar days (September 28, 2000) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by Dr. Richard Nahin, Executive Secretary, CAPCAM, National Institutes of Health, Building 31, Room 5B36, 31 Center Drive, Bethesda, Maryland 20892, 301 496–4792, Fax 301–402–4741.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Dated: September 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 00–23316 Filed 9–11–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. the grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: September 6, 2000.

Time: 12:00 pm to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435–3565.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel

Date: September 21–23, 2000

Time: 7:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hampton Inn, 1101 E. College Avenue, College Station, PA 16801.

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 31, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–23315 Filed 9–11–00; 8:45 am]

BILLING CODE 4130–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act (PRA)

ACTION: New information collection.

SUMMARY: The U.S. Fish and Wildlife Service (Service) plans to submit the collection of information requirement described below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (PRA). You may obtain copies of the collection requirement and related forms and explanatory material by contacting the Service's Information Collection Clearance Officer at the phone number listed below. The Service is soliciting comment and suggestions on the requirement as described below.

DATES: Interested parties must submit comments on or before November 13, 2000.

ADDRESSES: Interested parties should send comments and suggestions on the requirement to Rebecca A. Mullin, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203, (703) 358–2287 or *Rebecca_Mullin@fws.gov* E-mail.

FOR FURTHER INFORMATION CONTACT: Jack Hicks, (703) 358–1851, fax (703) 358–1837, or *Jack_Hicks @fws.gov* E-mail.

SUPPLEMENTARY INFORMATION:

Title of Form: NEPA COMPLIANCE CHECKLIST

FWS Form Number: 3–2185

OMB Approval Number: 1018–XXXX

The Service will submit to OMB an approval request before collecting information.

Description and Use: The Service administers several grant programs authorized by the Federal Aid in Wildlife Restoration Act, the Federal Aid in Sport Fish Restoration Act, the Anadromous Fish Conservation Act, the Endangered Species Act, the Clean Vessel Act, the Sportfishing and Boating Safety Act, North American Wetlands

Conservation Act, the Coastal Wetlands Planning, Protection and Restoration Act, and through other Acts and authorities. The Service uses the information collected to make a determination as to National Environmental Policy Act compliance. The State or other grantee uses the checklist as a guide to general NEPA requirements and it becomes an administrative record to meet their assurances requirements for receiving a grant. Grant applicants provide the information requested in the NEPA Compliance Checklist in order to qualify to receive benefits in the form of grants for purposes outlined in the applicable law. This form is designed to cause the minimum impact in the form of hourly burden on grant applicants and still get all the required information. Only about 3 percent of the Service's applicants for either a new grant or for an amendment to an existing grant will meet the criteria, and need to complete the NEPA Compliance Checklist.

SUPPLEMENTAL INFORMATION: The Service plans to submit the following information collection requirements to OMB for review and approval under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Frequency: Generally annually.

Description of Respondents: State Government, territorial (the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa), local governments, and others receiving grant funds.

COMPLETION TIME AND ANNUAL RESPONSE AND BURDEN ESTIMATE

Form name	Completion time per checklist	Annual response	Annual burden
NEPA Compliance Checklist	½	160	80

NEPA COMPLIANCE CHECKLIST

OMB Control Number 1018-XXXX
Expires: xx/xx/xxxx

State: **Federal Financial Assistance Grant/Agreement/Amendment Number:**

Grant/Project Name:

This proposal ☐ is; ☐ is not completely covered by categorical exclusion No(s). _____, 516 DM 6 Appendix 1.
(check (✓) one) *(Review proposed activities. An appropriate categorical exclusion must be identified before completing the remainder of the Checklist. If a categorical exclusion cannot be identified, or the proposal cannot meet the qualifying criteria in the categorical exclusion, an EA must be prepared.)*

Exceptions:

Will This Proposal *(check (✓) yes or no for each item below)*:

Yes	No		
☐	☐	1.	Have significant adverse effects on public health or safety.
☐	☐	2.	Have adverse effects on such unique geographic characteristics as historic or cultural resources, park, recreation or refuge lands, wilderness areas, wild or scenic rivers, sole or principal drinking water aquifers, prime farmlands, wetlands, floodplains, or ecologically significant or critical areas, including those listed on the Department's National Register of Natural Landmarks.
☐	☐	3.	Have highly controversial environmental effects.
☐	☐	4.	Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.
☐	☐	5.	Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.
☐	☐	6.	Be directly related to other actions with individually insignificant, but cumulatively significant environmental effects.
☐	☐	7.	Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places.
☐	☐	8.	Have adverse effects on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have adverse effects on designated Critical Habitat for these species.
☐	☐	9.	Have material adverse effects on resources requiring compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act.
☐	☐	10.	Threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

(If any of the above exceptions receive a "Yes" check (✓), an EA must be prepared.)

Concurrences/Approvals:

Project Leader: _____ Date: _____

State Authority Concurrence: _____ Date: _____
(with financial assistance signature authority, if applicable)

Within the spirit and intent of the Council of Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA) and other statutes, orders, and policies that protect fish and wildlife resources, I have established the following administrative record and have determined that the grant/agreement/amendment:

☐ **is a categorical exclusion as provided by 516 DM 6, Appendix 1. No further NEPA documentation will therefore be made.**
☐ **is not completely covered by the categorical exclusion as provided by 516 DM 6, Appendix 1. An EA must be prepared.**
☐ **includes other attached information supporting the Checklist.**

Service signature approval:
RO/WO Environmental Coordinator (if required): _____ Date: _____

Staff Specialist, Division of Federal Aid: _____ Date: _____

FWS Form 3-2185 Version 8/2000

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 350 1) and the Privacy Act of 1974 (U.S.C. 552), please be advised that:

The gathering of information from applicants to gain benefits is authorized under the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777-777k) and the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669-669i). Information from this form will be used to formalize and execute Grant Agreements and Amendment to Grant Agreements issued under these and other Acts. Your participation in completing this form is required to obtain benefits. Once submitted this form becomes public information and is not protected under the Privacy Act. The public reporting burden for this form is estimated at one-half hour per response, including time for gathering information, completing, reviewing and obtaining signature. Direct comments to the Service Information Collection Clearance Officer, 1018-XXXX, U.S. Fish and Wildlife Service, MS 222-ARLSQ; 1849 C Street N.W., Washington, D.C. 20240.

An agency may not conduct and a person is not required to complete a collection of information unless a currently valid OMB control number is displayed.

Dated: September 5, 2000.

Rebecca A. Mullin,

U.S. Fish and Wildlife Service Information Collection Officer.

[FR Doc. 00–23251 Filed 9–11–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

Applicant: Mr. Jan Roger van Oosten, Seattle, Washington, on behalf of the Solomon Islands Parrot Consortium (CB016). The applicant wishes to amend approved cooperative breeding program CB 016, to include Ducorp's cockatoo (*Cacatua ducorpsii*). In addition, the applicant wishes to include additional specimens of Yellow-bibbed lory (*Lorius chlorocercus*). The International Loriinae Society maintains responsibility for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358-2281).

Dated: September 6, 2000.

Rosemarie Gnam,

Chief, Branch of CITES Operations, Division of Management Authority.

[FR Doc. 00–23360 Filed 9–11–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to Section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

Applicant: Mr. Rick Jordan, Dripping Springs, Texas, on behalf of the Cooperative Breeding Program for Crimson-bellied conure (CB 009). The applicant wishes to amend approved cooperative breeding program CB 009, to include the following species of conure: Hoffman's conure (*Pyrrhura hoffmani hoffmani* and *Pyrrhura hoffmani gaudens*). The American Federation of Aviculture maintains responsibility for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: September 6, 2000

Rosemarie Gnam,

Chief, Branch of CITES Operations Division of Management Authority.

[FR Doc. 00–23361 Filed 9–11–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–075–2822–JL–G172]

Notice of Closure to Livestock Grazing Use and Notice of Intent To Impound

SUMMARY: Effective immediately, the Warm Springs allotment, #05315 is closed to livestock grazing as well as that portion of Houtz Canyon allotment, #05316 north of the Houtz Canyon Road. This closure will remain in effect until March 1, 2003; or until such time as the authorized officer of the Bureau of Land Management (BLM), Malad Resource Area determines the closure may be lifted. This closure is a direct result of a wildfire that burned this area in July of 2000 and subsequent rehabilitation efforts of the BLM. The closure will promote the reestablishment of vegetation on this site and improve the potential for recovery of wildlife and livestock forage.

This notice is also to inform the public and permittees that any unauthorized livestock grazing upon public land or other lands under the BLM's control is in violation of 43 CFR 4140.1(b)(1) and may be impounded. The unauthorized livestock may be impounded after five days from delivery of this notice or any time after five days from publishing and posting this notice. Unauthorized livestock within the Warm Springs and the Houtz Canyon allotments, may be impounded without further notice any time in the 12-month period beginning five days from receipt of this notice as authorized by 43 CFR 4150.4–2. This notice is issued in accordance with 43 CFR 4150.4–1 (a) and (b); any impoundment of unauthorized livestock in connection with this notice will be done in accordance with 43 CFR 4150.4–2. Pursuant to 43 CFR 4150.4–4, any owner or his agent, or both, or lien-holder of record of the impounded livestock may redeem them under these regulations or, if a suitable agreement is in effect, in accordance with State law, prior to the time of sale upon settlement with the United States under Sec. 4150.3 or adequate showing that there has been no violation.

SUPPLEMENTARY INFORMATION: The area of closure is located in the northwestern portion of Rockland Valley, within the above mentioned allotments and more specifically described wholly or partially in T. 10 S., R. 29 E., secs. 12, 13, 24, and 25; T. 10 S., R. 30 E., secs. 7, 18, 19, 20, 28, 29, 30, 31, and 32; Detailed maps of the area closed to livestock grazing are available at the Malad Field Station, Malad, Idaho.

FOR FURTHER INFORMATION CONTACT: The Malad Field Station, 138 S. Main, Malad, ID 83252 or the Pocatello Field Office, 1111 N. 8th Avenue, Pocatello, ID 83201.

Dated: August 28, 2000.

Jeff Steele,

Pocatello Field Manager.

[FR Doc. 00–23281 Filed 9–11–00; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–00–1320–EL–P; MTM 90308]

AGENCY: Bureau of Land Management, Montana State Office.

ACTION: Notice of Invitation—Coal Exploration License Application MTM 90308.

SUMMARY: Members of the public are hereby invited to participate with Spring Creek Coal Company in a program for the exploration of coal deposits owned by the United States of America in the following-described lands located in Big Horn County, Montana, encompassing 520.00 acres:

T. 8 S., R. 39 E., P.M.M.
Sec. 14: E½SE¼
Sec. 21: SE¼
Sec. 22: SW¼SW¼
Sec. 23: N½NE¼
Sec. 24: N½NW¼
T. 8 S., R. 40 E., P.M.M.
Sec. 30: S½SE¼

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 Spring Creek Coal Company, P.O. Box 67, Decker, Montana 59025. Such written notice must refer to serial number MTM 90308 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 *Sheridan Press* newspaper, whichever is later. This Notice will be published once a week for two (2) consecutive weeks in the *Sheridan Press*, Sheridan, Wyoming.

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 Spring Creek Coal 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 Robert Giovanini, 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) 896–5084 or (406) 896–5063, respectively.

Date: September 6, 2000.

Randy D. Heuscher,

Chief, Branch of Solid Minerals.

[FR Doc. 00–23320 Filed 9–11–00; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–EL]

Powder River Regional Coal Team Activities: Notice of Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Powder River Regional Coal Team (RCT) has scheduled a public meeting for October 25, 2000, to review current and proposed activities in the Powder River Coal Region and to review pending coal lease applications (LBA).

DATES: The RCT meeting will begin at 9 a.m. M.D.T. on Wednesday, October 25, 2000. The meeting is open to the public.

ADDRESSES: The meeting will be held at the Hitching Post Inn, 1700 W. Lincolnway, Cheyenne, Wyoming 82001, 307–638–3301. Attendees are responsible for making their own reservations.

FOR FURTHER INFORMATION CONTACT: Mel Schlagel, Wyoming State Office, P.O. Box 1828, MS–922, Cheyenne, Wyoming 82003, telephone 307–775–6257.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to discuss pending coal lease by applications (LBA) in the Powder River Basin. Specific topics for the Powder River (RCT) to consider are:

1. *North Jacobs Ranch LBA.* A follow-up discussion on the North Jacobs Ranch LBA (Kennecott) is needed. This LBA was discussed at the February 1998 RCT meeting in Billings and again at the 1999 RCT meeting in Gillette. Several items such as coal and oil and gas conflicts need further followup by the RCT.

2. *Belle Ayr LBA.* The Belle Ayr Mine (RAG) recently requested accelerated processing for a portion of the original Belle Ayr LBA. The original LBA contained approximately 1,335.39 acres with approximately 171 million tons of Federal coal. The accelerated lease application reduced the original LBA by 243.61 acres and 29 million tons of Federal coal. The RCT needs to consider the processing schedule for the accelerated lease application and to reschedule the original Belle Ayr LBA.

3. *State Section LBA.* This new LBA, filed by Evergreen Enterprises, is for 8,494.13 acres with approximately 712.1 million tons of Federal coal. Approximately 4,741 acres and 519 million tons of Federal coal within this LBA overlap with the North Jacobs Ranch LBA. The RCT needs to consider

the processing schedule for the State Section LBA.

4. *NARO LBA.* This is a new LBA filed by the Powder River Coal Company (Peabody) for the North Antelope Rochelle Mine. Approximately 4,501 acres and 564 million tons of Federal coal are involved. The Powder River Coal Company also has a small lease modification pending (WYW136142). The RCT needs to consider the processing schedule for the NARO LBA.

5. *Little Thunder Creek LBA.* This new LBA, filed by Ark Land Company, is for the Black Thunder Mine. Approximately 2,709.5 acres and 383.6 million tons of Federal coal are involved. The RCT needs to consider the processing schedule for the Little Thunder Creek LBA.

6. *West Roundup LBA.* Triton Coal Company filed this new LBA for the North Rochelle Mine. Approximately 1,869.12 acres and 173.2 million tons of Federal coal are involved. Triton Coal also has a small lease modification pending (WYW127221). The RCT needs to consider the processing schedule for the West Roundup LBA.

7. *North Hay Creek Tract.* Triton Coal Company filed this new LBA for the Buckskin Mine. Approximately 1,015.51 acres and 135 million tons of Federal coal are involved. The RCT needs to consider the processing schedule for the North Hay Creek Tract.

8. Any other LBAs filed before the October 25, 2000, meeting.

The RCT may generate recommendation(s) for any or all of these topics:

Any party interested in providing comments or data related to the above pending applications may either do so in writing to the State Director (925), Wyoming State Office, Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82003, no later than October 13, 2000, or by addressing the RCT with his/her concerns at the meeting on October 25, 2000.

The draft agenda for the meeting follows:

1. Introduction of RCT Members and guests.
2. Approval of the Minutes of the February 23, 1999, Regional Coal Team meeting held in Gillette, Wyoming.
3. Industry Presentations:

—Jacobs Ranch Coal Company
—Belle Ayr Coal Company
—Evergreen Enterprises
—Powder River Coal Company
—Ark Land Company
—Triton Coal Company

4. Other pending coal action updates
5. RCT Activity Planning Recommendations

—Review and recommendation(s) on pending Lease Application(s).

6. Discussion of the next meeting.
7. Adjourn.

Alan R. Pierson,

State Director.

[FR Doc. 00–23318 Filed 9–11–00; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–00–1020–PB]

New Mexico Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix 1, The Department of the Interior, Bureau of Land Management (BLM), announces a meeting of the New Mexico Resource Advisory Council (RAC). The meeting will be held on October 12 and 13, 2000, at the Copper Manor Motel, 710 Silver Heights Blvd, Silver City, NM 88062.

There will be an optional all day field trip on Wednesday, October 11, 2000. Transportation will be provided for RAC members. The optional field trip will be organized by the Las Cruces Field Office of the Bureau of Land Management and hosted by Phelps Dodge Mining Company, which operates the Chino, Tyrone and Cobre mines near Silver City.

The Field Tour will leave from the Copper Manor Motel at 8:00 a.m. and proceed to the Gila River area near Cliff, NM. Mr. Thomas L. Shelley, Manager of Environmental Services at Phelps Dodge Tyrone, Inc., will provide a tour of Southwestern Willow Flycatcher habitat managed by the Tyrone Mine. The Southwestern Willow Flycatcher is a small, migratory bird classified as endangered by the Endangered Species Act. This portion of the Gila River valley is home to the largest known population of this species. The tour will proceed to the Chino Mine. An overview presentation of the Chino facility will be given. The Chino Mine will be toured during the afternoon. The tour will return to Silver City by 5:00 p.m.

The meeting on Thursday, October 12, 2000, starts at 8:00 a.m. and will end about 5:00 p.m.

The three established RAC Subcommittees may have late afternoon or evening meetings on this day. The exact time and location of the Subcommittee meetings will be established by the Chairperson of each Subcommittee earlier in the day during the RAC meeting. On Friday, October 13, 2000, the meeting starts at 8:00 a.m. and will end about 3:00 p.m. The ending time of 3:00 p.m. may be changed depending on the work remaining for the RAC. The draft agenda for the RAC meeting includes agreement on the meeting agenda, any RAC comments on the draft minutes of the last RAC meeting on August 23 through 25, 2000, in Gallup, NM, a check-in from the RAC members and the following planned presentations that also include discussion: A brief review of the OHV issue which was discussed in depth at the last meeting, an overview by Joseph Brunner, Manager of Environmental Services, Chino Mine Services, of a project to study the impacts of historic mining operations on human health and the environment in and around the Santa Rita Mine, and to remediate those impacts, and a presentation by Eddie Humphrey, Manager of Environmental remediation at the Pinos Altos Mine Reclamation Project, a small underground mine near Silver City. The Bureau of Land Management and the State of New Mexico will also provide speakers on the main topics. Jon Borne, New Mexico State University, Regional Task Force on the Southwestern Willow Flycatcher has been invited, as well a speaker from New Mexico Energy, Minerals and Natural Resources.

The meeting is open to the public, and starting at 2:45 p.m. on Thursday, October 12, 2000, there will be an additional 15 minute Public Comment Period for members of the public who are not able to be present for the regular Public Comment Period on Friday, October 13, to address the RAC. The meeting on Friday, August 25 will start at 8:00 a.m. with a review of the agenda thus far. At 8:15 a.m., BLM State of the Field Office Reports will take place, presented by Field Office managers with a concentration on conditions of grazing allotments, community based planning, abandoned mines, assessments of fundamentals (Standards and Guidelines).

The regular Public Comment Period for the Public to address the RAC is on Friday, August 25, 2000, from 10:00 a.m. to 12:00 noon. The RAC may reduce or extend the end time of 12:00 noon depending on the number of people wishing to address the RAC. Anyone wishing to address the RAC should be present at the 10:00 a.m. starting time. The length of time

available for each person to address the RAC will be established at the start of the public comment period and will depend on how many people wish to address the RAC. At the completion of public comments, the RAC may continue discussion on its agenda items. Scheduled at 1:00 p.m. are RAC Subcommittee Reports from the Urban and Open Space Subcommittee, the Roads and Trails Subcommittee, and the Oil and Gas Subcommittee. These reports are followed by RAC discussions and any RAC recommendations, development of draft agenda items, selection of a location for the next RAC meeting and a RAC assessment of the current meeting.

FOR FURTHER INFORMATION CONTACT: Mary White, New Mexico State Office, Office of External Affairs, Bureau of Land Management, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, telephone (505) 438–7404.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for rangeland health and guidelines for grazing management.

Dated: September 5, 2000.

Richard A. Whitley,

Associate State Director.

[FR Doc. 00–23319 Filed 9–11–00; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–929–00–1910–HE–4677–UT940]

Montana: Filing of Amended Protraction Diagram Plats

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The plats of the amended protraction diagrams accepted August 18 and 21, 2000, of the following described lands are scheduled to be officially filed in the Montana State Office, Billings Montana, thirty (30) days from the date of this publication.

Tps. 21, 22, 23, and 24 N., Rs. 31, 32, 33, and 34 W.
The plat, representing the Amended Protraction Diagram 31 Index of unsurveyed Townships 21, 22, 23, and 24 North, Ranges 31, 32, 33, and 34 West, Principal Meridian, Montana, was accepted August 21, 2000.

T. 21 N., R. 31 W.
The plat, representing Amended Protraction Diagram 31 of unsurveyed Township 21 North, Range 31 West, Principal Meridian, Montana, was accepted August 21, 2000.

T. 22 N., R. 31 W.
The plat, representing Amended Protraction Diagram 31 of unsurveyed Township 22 North, Range 31 West, Principal Meridian, Montana, was accepted August 21, 2000.

T. 23 N., R. 31 W.
The plat, representing Amended Protraction Diagram 31 of unsurveyed Township 23 North, Range 31 West, Principal Meridian, Montana, was accepted August 21, 2000.

T. 21 N., R. 32 W.
The plat, representing Amended Protraction Diagram 31 of unsurveyed Township 21 North, Range 32 West, Principal Meridian, Montana, was accepted August 21, 2000.

T. 22 N., R. 32 W.
The plat, representing Amended Protraction Diagram 31 of unsurveyed Township 22 North, Range 32 West, Principal Meridian, Montana, was accepted August 21, 2000.

T. 23 N., R. 32 W.
The plat, representing Amended Protraction Diagram 31 of unsurveyed Township 23 North, Range 32 West, Principal Meridian, Montana, was accepted August 21, 2000.

T. 24 N., R. 32 W.
The plat, representing Amended Protraction Diagram 31 of unsurveyed Township 24 North, Range 32 West, Principal Meridian, Montana, was accepted August 21, 2000.

T. 23 N., R. 32 W.
The plat, representing Amended Protraction Diagram 31 of unsurveyed Township 23 North, Range 32 West, Principal Meridian, Montana, was accepted August 21, 2000.

T. 24 N., R. 33 W.
The plat, representing Amended Protraction Diagram 31 of unsurveyed Township 24 North, Range 33 West, Principal Meridian, Montana, was accepted August 21, 2000.

T. 24 N., R. 34 W.
The plat, representing Amended Protraction Diagram 31 of unsurveyed Township 24 North, Range 34 West, Principal Meridian, Montana, was accepted August 21, 2000.

Tps. 22, 23, 24, and 25 N., Rs. 28, 29, and 30 W.
The plat, representing the Amended Protraction Diagram 32 Index of unsurveyed Townships 22, 23, 24, and 25 North, Ranges 28, 29, and 30 West, Principal Meridian, Montana, was accepted August 18, 2000.

T. 22 N., R. 28 W.
The plat, representing Amended Protraction Diagram 32 of unsurveyed Township 22 North, Range 28 West, Principal Meridian, Montana, was accepted August 18, 2000.

T. 23 N., R. 28 W.
The plat, representing Amended Protraction Diagram 32 of unsurveyed Township 23 North, Range 28 West, Principal Meridian, Montana, was accepted August 18, 2000.

T. 24 N., R. 28 W.
The plat, representing Amended Protraction Diagram 32 of unsurveyed Township 24 North, Range 28 West, Principal Meridian, Montana, was accepted August 18, 2000.

T. 25 N., R. 28 W.
The plat, representing Amended Protraction Diagram 32 of unsurveyed Township 25 North, Range 28 West, Principal Meridian, Montana, was accepted August 18, 2000.

T. 23 N., R. 29 W.
The plat, representing Amended Protraction Diagram 32 of unsurveyed Township 23 North, Range 29 West, Principal Meridian, Montana, was accepted August 18, 2000.

T. 24 N., R. 29 W.
The plat, representing Amended Protraction Diagram 32 of unsurveyed Township 24 North, Range 29 West, Principal Meridian, Montana, was accepted August 18, 2000.

T. 24 N., R. 30 W.
The plat, representing Amended Protraction Diagram 32 of unsurveyed Township 24 North, Range 30 West, Principal Meridian, Montana, was accepted August 18, 2000.

The amended protraction diagrams were prepared at the request of the U.S. Forest Service to accommodate Revision of Primary Base Quadrangle Maps for the Geometronics Service Center.

A copy of the preceding described plats of the amended protraction diagrams accepted August 18 and 21, 2000, will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against these amended protraction diagrams, accepted August 18 and 21, 2000, as shown on these plats, is received prior to the date of the official filings, the filings will be stayed pending consideration of the protests.

These particular plats of the amended protraction diagrams will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: August 29, 2000.

Steven G. Schey,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 00–23364 Filed 9–11–00; 8:45 am]

BILLING CODE 4310–DN–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, Correction

AGENCY: Bureau of Land Management, Interior.

Correction: In notice issued in Volume 65 Number 152 beginning on page 48250 in the issue dated August 7, 2000, make the following correction: On page 48250 under SUMMARY:, in the third column, ''25, E½SE¼SE¼'' should read ''25, E½, SE¼SW¼''.

Dated: August 28, 2000.

Deborah K. Rawhouser,

Assistant Field Manager, Resources, Use & Protection.

[FR Doc. 00–23365 Filed 9–11–00; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–BJ: GP0–0348]

Filing of Plats of Survey; Oregon/Washington

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Williamette Meridian

Oregon

T. 25 S., R. 2 W., accepted August 4, 2000
T. 22 S., R. 3 W., accepted August 16, 2000

Washington

T. 2 N., R. 7 E., accepted August 10, 2000
T. 30 N., R. 38 E., accepted August 11, 2000
T. 12 N., R. 8 E., accepted August 11, 2000

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey, and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue), P.O. Box 2965, Portland, Oregon 97208.

Dated: August 24, 2000.

Robert D. DeViney, Jr.,

Branch of Realty and Records Services.

[FR Doc. 00–23282 Filed 9–11–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

National Park Service

Gaviota Coast Seashore Feasibility Study, Santa Barbara County, CA; Notice of Intent To Prepare an Environmental Impact Statement

SUMMARY: In accordance with § 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 et seq.), the National Park Service (NPS) is undertaking a conservation planning and impact analysis process to identify and assess potential impacts of alternative resource protection and visitor use concepts and other considerations within the Gaviota Coast Seashore Feasibility Study area in Santa Barbara County. Notice is hereby given that a public scoping process has been initiated to prepare an environmental impact statement (EIS) and feasibility study report. The purpose of the scoping process is to elicit public comment regarding the full spectrum of public issues and concerns, including a suitable range of alternatives, appropriate boundaries, and the nature and extent of potential environmental impacts and appropriate mitigation strategies which should be addressed in the EIS process.

Background: As authorized by Pub.L. 106–113, and H.R. 3194 Conference Report, November 17, 1999, Title III, § 326, the NPS is conducting a feasibility study to determine the potential for designating the Gaviota Coast as a unit of the National Park System. The Gaviota Coast study area includes approximately 76 miles of coastline and 200,000 acres of land. It is entirely within Santa Barbara County, California, and extends from Coal Oil Point in Isla Vista northerly to Point Sal at the northern boundary of Vandenberg Air Force Base. The study area boundary extends inland to the watershed crests except in the Santa Ynez Valley, where it is primarily limited to Vandenberg Air Force Base. Inshore coastal waters will also be addressed in the feasibility study.

In conducting the Gaviota Coast feasibility study, the NPS will evaluate the national significance of the area's natural, cultural, and recreational resources. The NPS will also assess the area's suitability and feasibility to be a unit of the National Park System, whereby factors which the NPS study team will evaluate include: Whether the Gaviota Coast includes types or quality of resources not already adequately represented in the National Park System; whether long-term protection and public use of the area are feasible, and; whether the area can be adequately protected and administered at a reasonable cost.

The NPS will also consider: alternative boundaries and strategies for the management, protection and use of significant resources within the overall study area, including management by other public agencies or the private sector; technical or financial assistance available from established programs or special initiatives and partnerships; alternative designations to a National Seashore (*e.g.,* Heritage Area), and; cooperative management by NPS and other entities.

After public input and review of a draft feasibility study report, alternatives will be identified and evaluated, and the results transmitted to Congress in a final feasibility study report.

Scoping to Date/Comments: Various newsletters and press releases issued during the initial scoping process for environmental impact analysis indicated initial consideration had been given to preparing an Environmental Assessment. Preliminary public information activities were undertaken beginning in January 2000. These included three public meetings in Santa Barbara, Goleta, and Lompoc, as well as two invitational workshops in Gaviota to explore desired future conditions for the coast. In addition, scoping meetings were held with a wide representation of stakeholder groups and interested organizations. Approximately 200 responses were received by letter, comment sheets, e-mail, and Internet web page forms. Two newsletter

mailings describing the planning process and preliminary identification of issues were also widely distributed. Upon consideration of public responses obtained through this initial public involvement, it has been determined that an Environmental Impact Statement will be prepared.

All comments received during the initial phase have been fully documented and have already aided this conservation planning and environmental impact analysis process, as noted above. A summary of all issues and concerns generated to date is available on request—this summary and additional information about the study can also be obtained on the Internet at http://www.nps.gov/pwro/gaviota/.

In addition to the extensive public involvement undertaken to date, formal scoping for the feasibility study and EIS is hereby initiated. All interested individuals, organizations and agencies wishing to provide additional comments, suggestions, or relevant information (or those wishing to be added to the project mailing list) should respond to Gaviota Coast Feasibility Study Team, Attn: Ray Murray, National Park Service, 600 Harrison Street, Suite 600, San Francisco, CA 94107. All written comments must be postmarked not later than October 9, 2000 (or if via e-mail, transmitted no later than this date to PGSO_Gaviota@nps.gov).

If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

Decision Process: Availability of the draft EIS for review and written comment will be announced by **Federal Register** notice, via local and regional news media, and direct mailing. At this time the draft EIS is anticipated to be available for public review in June 2001, and that subsequently a final EIS will be completed in January 2002. To afford additional opportunity to comment on the draft EIS after it is distributed, public meetings will be held in the Gaviota Coast area (dates and locations to be determined). Notice of the availability of the final EIS will likewise be published in the **Federal Register**.

The official responsible for the initial recommendation is the Regional Director, Pacific West Region, National Park Service. The official responsible for amending or ratifying the recommendation and transmitting to the Secretary of the Interior is the Director, National Park Service. The Secretary determines whether to forward the recommendation to Congress for their consideration.

Dated: August 31, 2000.

Holly Bundock,

Acting Regional Director, Pacific West Region.

[FR Doc. 00–23329 Filed 9–11–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Commercial Services Plan/ Environmental Impact Statement, Glacier National Park, Montana

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for Commercial Services Plan, Glacier National Park.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an Environmental Impact Statement for the Commercial Services Plan for Glacier National Park. This plan and Environmental Impact Statement will be approved by the Intermountain Regional Director. This plan will implement decisions previously made in the newly completed General Management Plan.

The approved General Management Plan (GMP) for Glacier National Park committed the park to rehabilitate the historic lodging facilities in Glacier and outlined general direction for the park and its commercial services. The GMP states, ''Historic visitor lodging experiences would continue. . .from camping cabins to the grand hotels, as appropriate to the geographic area and management zones.''

The GMP also required the park to develop a commercial services plan to deal more specifically with concessioner activities.

''The overall mix of services to be offered would be determined through the development of a commercial services plan. The type and level of these services would be guided by the management philosophy of the General Management Plan, to retain Glacier's classic western park character. A minimum of approximately 500 rooms would be retained. . .Develop a commercial service plan that analyzes visitor needs, expectations and demands; resource constraints and implications; and determine economic feasibility to establish the number of rooms and service that should be made available in the park. . .'' GMP 1999

The effort will result in a comprehensive Commercial Services Plan. Alternatives to be considered include no-action and alternatives that address the following. A preferred alternative will be identified in the draft Environmental Impact Statement.

1. Determine the overall mix of commercial services.
2. Establish the framework for future decisions.
3. Establish the types and level of service by park area based on need, expectations, economic feasibility, resource concerns, etc.
4. Provide a vision and implementation strategy for rehabilitating the historic hotels and continuing a wide range of visitor experiences.
5. Provide the specific information necessary for issuance of new concession contracts including those that allow the rehabilitation efforts.

Congress defined concession activity and enacted Title IV of the National Parks Omnibus Management Act of 1998, under which the National Park Service (NPS) authorizes park concession operations. It requires that development ''be limited to those accommodations, facilities, services that are necessary and appropriate for public use and enjoyment. . .'' of the national park area in which they are located ''. . .and that are consistent to the highest practicable degree with the preservation and conservation of the resources and values of the unit.''

The plan will tier down from the General Management plan to provide a framework or broad, general direction for commercial services as well as specific information such as the number of a particular facility type in a given area. It would also provide site-specific schematic design for key areas of the park. While providing direction for the park's commercial services, the plan would also provide the information necessary for development of prospectuses for new concession contracts.

A scoping newsletter will be prepared which details the issues identified to date. Copies will be distributed in the fall of 2000 and will be available online on the Commercial Services Plan website at: http://www.nps.gov/planning/glac/ or by writing to: Commercial Services Plan/EIS Glacier National Park West Glacier, MT 59936–0128.

If you wish to comment, you may submit your comments by any one of

several methods. You may mail comments to the address noted above. You may also comment via the Internet address noted above. Please also include your name and return mailing address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at the address noted above. Finally, you may hand-deliver comments to Glacier National Park at park headquarters in West Glacier, Montana.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Contact Superintendent, Glacier National Park, 406–888–7801.

R. Everhart,

Regional Director, Intermountain Region.

[FR Doc. 00–23328 Filed 9–11–00; 8:45 am]

BILLING CODE 4310–70–P

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 September 2, 2000. Pursuant to section 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 September 27, 2000.

Carol D. Shull,

Keeper of the National Register.

ARIZONA

Gila County

Randall, Alfred Jason, House, AZ 87, Pine, 00001165

CALIFORNIA

Los Angeles County

Angels Flight Railway, Hill St., Los Angeles, 00001168

Club Casa Del Mar, 1910 Ocean Ave., Santa Monica, 00001169

San Diego County

San Diego Veterans' War Memorial Building—Balboa Park, 3325 Zoo Dr., San Diego, 00001167 Santa Barbara County

Stow House, 304 N. Los Carneros Rd., Goleta, 00001166

FLORIDA

Manatee County

Villa Serena Apartments, (Whitfield Estates Subdivision MPS) 7014 Willow St., Sarasota, 00001172

LOUISIANA

Jefferson Parish

Martin, Ed, Seafood Company Factory and House, 300 Sala Ave. and 306 Sala House, Westwego, 00001170

MISSOURI

St. Louis Independent city

A & P Food Stores Building, 6016, 6014, and 6018 Delmar, St. Louis (Independent City), 00001171

TEXAS

Grayson County

Sherman US Post Office and Courthouse, 101 E. Pecan St., Sherman, 00001173

Hays County

San Antonio US Post Office and Courthouse, 615 E. Houston St., San Antonio, 00001174

Potter County

Amarillo US Post Office and Courthouse, 205 E. Fifth St., Amarillo, 00001175

UTAH

Sanpete County

Wales Co-operative Mercantile Institution, 150 N. State St., Wales, 00001176

[FR Doc. 00–23330 Filed 9–11–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Kansas and Nebraska in the Possession of the Kansas State Historical Society, Topeka, KS

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Kansas and Nebraska in the possession of the Kansas State Historical Society, Topeka, KS.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Kansas State Historical Society professional staff in consultation with representatives of the Pawnee Nation of Oklahoma.

During the late 1980's, human remains representing one individual were recovered from the Minneapolis site (14OT5), Ottawa County, KS by Mr. Harold Reed, a local artifact collector. In 1990, Mr. Reed donated these human remains to the Kansas State Historical Society. No known individual was identified. No associated funerary objects are present.

Based on the reported archeological context, this individual has been identified as Native American. Based on material culture, geographic location, and radiocarbon dates, the Minneapolis site has been identified as a Smoky Hill Aspect (Central Plains Tradition) occupation dating from approximately A.D. 1250. Based on temporal position, geographic location, and continuities of material culture, the Smoky Hill Aspect has been identified as ancestral to the Pawnee Nation of Oklahoma.

In 1978, human remains representing three individuals were recovered from site 14SD350, Sheridan County, KS during excavations conducted by a Kansas State Historical Society archeologist. No known individuals

were identified. No associated funerary objects are present.

Based on archeological context, these individuals have been identified as Native American. Based on material culture and geographic location, site 14SD350 has been identified as an Upper Republican Aspect (Central Plains Tradition) occupation dating from approximately A.D. 1250. Based on temporal position, geographic location, and continuities of material culture, the Upper Republican Aspect has been identified as ancestral to the Pawnee Nation of Oklahoma.

In 1960, human remains representing two individuals were recovered from the Ringneck site (14LC302), Lincoln County, KS during legally authorized excavations conducted by Kansas State Historical Society archeologists. No known individuals were identified. No associated funerary objects are present.

Based on archeological context, these individuals have been identified as Native American. Based on material culture and geographic location, the Ringneck site has been identified as an Upper Republican Aspect (Central Plains Tradition) habitation dating from approximately A.D. 1250. Based on temporal position, geographic location, and continuities of material culture, the Upper Republican Aspect has been identified as ancestral to the Pawnee Nation of Oklahoma.

In 1971, human remains representing one individual were donated to Kansas State Historical Society by Guy Whiteford who reportedly recovered these human remains during excavations at site 14SA412, Saline County, KS. No known individual was identified. No associated funerary objects are present.

Based on the reported archeological context, this individual has been identified as Native American. Based on material culture and geographic location, site 14SA412 has been identified as a Smoky Hill Aspect (Central Plains Tradition) habitation dating from approximately A.D. 1250. Based on temporal position, geographic location, and continuities of material culture, the Smoky Hill Aspect has been identified as ancestral to the Pawnee Nation of Oklahoma.

In 1999, human remains representing one individual were donated to Kansas State Historical Society by a forensic osteologist. The osteologist received these human remains from a representative of the Abilene High School, Abilene, KS. No known individual was identified. No associated funerary objects are present.

Abilene High School records indicate that these are the remains of a Pawnee individual excavated in 1925 from the Guide Rock, NE area. Based on forensic analysis, this individual has been identified as Native American. Based on the available documentation, this individual has been further identified as Pawnee.

Based on the above-mentioned information, officials of the Kansas State Historical Society have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of eight individuals of Native American ancestry. Officials of the Kansas State Historical Society have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Pawnee Nation of Oklahoma. This notice has been sent to officials of the Pawnee Nation of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Randall M. Thies, Archeologist, Kansas State Historical Society, 6425 Southwest Sixth Avenue, Topeka, KS 66615-1099, telephone (785) 272-8681, extension 267, before October 12, 2000. Repatriation of the human remains to the Pawnee Nation of Oklahoma may begin after that date if no additional claimants come forward.

Dated: August 18, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–23381 Filed 9–11–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Human Remains and Associated Funerary Objects from Fort Stevenson, Dakota Territory in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Fort Stevenson, Dakota Territory in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; the Spirit Lake Tribe, North Dakota; the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; and the Standing Rock Sioux Tribe of North and South Dakota.

In 1867, human remains representing three individuals were removed from Fort Stevenson, Dakota Territory by U.S. Army Surgeon Charles C. Gray and Acting Assistant Surgeon Washington Matthews on behalf of the Smithsonian Institution. No known individuals were identified. A Notice of Inventory Completion for these human remains was published September 3, 1997; a corrected notice was published September 15, 1997. The 16 associated funerary objects are 7 dentalium shell beads, 7 oval shell beads, 1 blue glass bead and a brass bracelet.

Neither the records of the Peabody Museum of Archaeology and Ethnology nor the Smithsonian Institution indicate the date of transfer of these individuals to the Peabody Museum of Archaeology and Ethnology. Primary accession and catalogue documents associated with these individuals at the Smithsonian record the individuals to be ''Yanktonnais Sioux.'' Cuthead Band of Upper Yanktonai Sioux oral traditions and historical documents indicate that Fort Stevenson was located within the Cuthead Band's traditional territory during the 19th century. The specific cultural affiliation attributed to the individuals by the collectors and the known policy during the 19th century of the Smithsonian Institution to request the remains of recently deceased Native individuals to be collected by U.S. Army personnel and Indian agents and sent to the Smithsonian Institution further support affiliation with the Cuthead Band of Yanktonai Sioux. The Cuthead Band of Yanktonai Sioux are represented by the Cheyenne River Sioux Tribe, Spirit Lake Tribe, Assiniboine and Sioux Tribes of the Fort

Peck Reservation, and the Standing Rock Sioux Tribe.

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(2), the 16 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these associated funerary objects and the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; the Spirit Lake Tribe, North Dakota; the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; and the Standing Rock Sioux Tribe of North and South Dakota. This notice has been sent to officials of the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; the Spirit Lake Tribe, North Dakota; the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; and the Standing Rock Sioux Tribe of North and South Dakota. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these associated funerary objects should contact Barbara Isaac, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 495–2254, before October 12, 2000. Repatriation of the associated funerary objects to the culturally affiliated tribes may begin after that date if no additional claimants come forward.

Dated: August 18, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–23379 Filed 9–11–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Iowa in the Possession of the State Historical Society of Iowa, Des Moines, IA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the State Historical Society of Iowa, Des Moines, IA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Office of the State Archaeologist of Iowa professional staff in consultation with representatives of the Iowa Tribe of Kansas and Nebraska, the Iowa Tribe of Oklahoma, and the Otoe-Missouria Tribe of Oklahoma.

In 1934, human remains representing 25 individuals were recovered from site 13AM21, the O'Regan Terrace, Allamakee County, IA during excavations conducted by Ellison Orr, under the direction of Charles R. Keyes, while a small number of human remains and objects from the same site were donated to Keyes and Orr by unknown individuals at an unknown date. No known individuals were identified. The 202 associated funerary objects include chipped stone tools, fossil fragments, a pebble, a clamshell, chert flakes, glass beads, pottery, metal ear ornaments, beaver incisor fragments, a bone awl fragment, a copper bracelet, and a brown fibrous material.

In 1934, human remains representing seven individuals were excavated from site 13AM59, Elephant Terrace, Allamakee County, northeastern Iowa, by Charles R. Keyes and Ellison Orr. No known individuals were identified. The six associated funerary objects include a whetstone, a chipped stone, a bone bead and fragments, and a fossil.

In 1936, human remains representing one individual were excavated from site 13AM61, the Woolstrom Cemetery, Allamakee County, northeastern Iowa, by Ellison Orr, under the direction of Charles R. Keyes. No known individuals were identified. The 15 associated funerary objects include a ceramic vessel, an iron fragment, a rolled copper tube, and metal ear ornaments.

In 1936, human remains representing one individual were excavated from site 13AM67, Burke's Mound, Allamakee County, northeastern Iowa, by Ellison Orr, under the direction of Charles R. Keyes. No known individuals were identified. The three associated funerary objects include a catlinite pipe, a projectile point, and a fossil. A fourth object, a projectile point, was found embedded in the sternum of the individual. It is unlikely to have been placed intentionally with the individual at the time of death or later as part of the death rite or ceremony. For the purpose of this notice, it is considered to be an intrinsic part of the human remains.

In 1936, human remains representing three individuals were excavated from site 13AM86, Hog Back Mound Group, Allamakee County, northeastern Iowa, by Ellison Orr, under the direction of Charles R. Keyes. No known individuals were identified. No associated funerary objects are present.

In 1934, human remains representing one individual were excavated from site 13AM104, Lane Farm Mounds, Allamakee County, northeastern Iowa, by Ellison Orr, under the direction of Charles R. Keyes. No known individuals were identified. The five associated funerary objects are Oneota pottery fragments.

In 1934 and 1936, human remains representing three individuals were excavated from site 13AM108, New Galena Mounds, Allamakee County, northeastern Iowa, by Ellison Orr, under the direction of Charles R. Keyes. No known individuals were identified. The 46 associated funerary objects include projectile points, other chipped stone tools, ground stone tools, flaking debris, a modified bone pipe, a shell awl, and a copper snake ornament.

In 1935, human remains representing two individuals were given to Charles R. Keyes by a collector, Lee Maiers. Mr. Maiers reportedly had removed these remains from site 21FA2, James Vosburg Gravel Pit, southern Minnesota, at an unknown date. No known individuals were identified. No associated funerary objects are present.

The human remains and associated funerary objects included in this notice were either recovered from excavations undertaken by Charles R. Keyes and Ellison Orr in northern Iowa and southern Minnesota between 1934 and 1936, or are part of collections that were given to Keyes. The remains now form part of the Charles R. Keyes Archaeological Collection. Based on archaeological, ethnohistorical, and biological evidence, historical maps, and similarities in material culture and manner of interment, the sites and remains have been identified as belonging to the Oneota and date to the 13th to 17th century. The Iowa and

Otoe-Missouria peoples have been culturally affiliated with the Oneota based on continuities of material culture and historical documents. Oral history evidence presented by representatives of the Iowa Tribe of Kansas and Nebraska, the Iowa Tribe of Oklahoma, and the Otoe-Missouria Tribe of Oklahoma further indicates Oneota affiliation with these present-day tribes.

Based on the above-mentioned information, officials of the State Historical Society of Iowa have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 43 individuals of Native American ancestry. Officials of the State Historical Society of Iowa also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 277 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Iowa State Historical Society have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Iowa Tribe of Kansas and Nebraska, the Iowa Tribe of Oklahoma, and the Otoe-Missouria Tribe of Oklahoma.

This notice has been sent to officials of the Iowa Tribe of Kansas and Nebraska, the Iowa Tribe of Oklahoma, and the Otoe-Missouria Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Jerome Thompson, State Historical Society of Iowa, New Historical Building, 600 East Locust, Des Moines, IA 50319-0290, telephone (515) 281-4221, before October 12, 2000. Repatriation of these human remains and associated funerary objects to the Iowa Tribe of Kansas and Nebraska, the Iowa Tribe of Oklahoma, and the Otoe-Missouria Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: August 9, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–23380 Filed 9–11–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Scott and Dubuque Counties, IA, and Rock Island County, IL, in the Possession of the Office of the State Archaeologist, University of Iowa, Iowa City, IA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Office of State Archaeologist, University of Iowa, Iowa City, IA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Office of State Archaeologist, University of Iowa, professional staff in consultation with representatives of the Sac and Fox Tribe of the Mississippi in Iowa, Sac and Fox Nation of Missouri in Kansas and Nebraska, and the Sac and Fox Nation of Oklahoma.

In 1877, human remains representing one individual were excavated from site 13ST82, Scott County, Iowa, by Rev. J. Gass and other members of the Davenport Academy of Natural Sciences. The museum associated with this group is now known as the Putnam Museum, Davenport, IA. In 1993, the human remains were transferred to the Office of the State Archaeologist Burials Program. No known individuals were identified. There are no associated funerary objects.

The Putnam Museum card catalog information identified the remains as coming from the upper levels of a Woodland-period mound and that this intrusive burial was associated with ''European artifacts.'' Descriptions of the excavations published in the Proceedings of the Davenport Academy of Natural Sciences describe this as a 19th century burial with ''a fire steel, a common clay pipe, a number of shell and glass beads, and a silver ear ring'' associated with the remains. Based on historical maps, written historical accounts, archaeological evidence, and tribal history, the Sac and Fox (Meskwaki) are known to have had villages in this vicinity during the late 1700's and early 1800's. The artifacts described as found with the remains are consistent with those associated with the Sac and Fox (Meskwaki). The current location of the artifacts is unknown.

In the late 1800's or early 1900's, human remains representing two individuals were excavated from graves at the Mines of Spain, Dubuque, Dubuque County, IA, by Richard Herrmann, a local collector. Mr. Herrmann donated the remains to the Ham House Museum, owned by the Dubuque County Historical Society, Dubuque, IA. In 1986, the remains were transferred to the Office of State Archaeologist Burials Program. No known individuals were identified. There are no associated funerary objects.

Mr. Herrmann's notes indicated that these two individuals were from graves located on a bluff in what is now known as the Mines of Spain, Dubuque, IA. Mr. Herrmann participated in the removal and reburial of the remains of what were purported to be Julien Dubuque (Hodges 1994), and he collected the remains of a woman from a grave outside of the presumed grave of Mr. Dubuque and Chief Peosta. Mr. Herrmann identified the woman as ''Potosa,'' also known as Ms. Potosi, the purported wife of Mr. Dubuque. Historical records do not provide any information on Ms. Potosi, and it is not known when she died, how old she was when she died, the cause of her death, or even if the remains in this collection are those of ''Potosa.'' The remains of a second individual were taken from a grave 60 feet west of the purported Dubuque/Peosta grave. A tag written by Mr. Herrmann identifies these remains as ''Kettle Chief.'' Given that none of the graves was marked, that they were excavated at least 75 to 100 years after the deaths of the named individuals, and the stated rationale for Mr. Herrmann's purported identification is suspect, the remains of these individuals cannot be identified with certainty. Physical anthropological evidence indicates that these two individuals are Native American. Historical maps, written historical accounts, archeological evidence, and tribal history demonstrate that the Meskwaki had a village at this location in the late 1700's and early 1800's and that Julien Dubuque lived and died in

the area while mining lead on his large land grant named Mines of Spain.

At an unknown date, human remains representing two individuals were removed by Bud Hansen, a local collector, reportedly from the Saukenauk site (11RI29), Rock Island, Rock Island County, IL. In 1987, the remains were transferred to the Office of State Archaeologist Burial Program from a private collection. Saukenauk was an important Sac and Meskwaki village between 1764 and 1830, which has been documented by oral historical, archival, and anthropological evidence. No known individuals were identified. There are no associated funerary objects.

Based on the above-mentioned information, officials of the Office of the State Archaeologist, University of Iowa, have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of five individuals of Native American ancestry. Also, officials of the Office of the State Archaeologist, University of Iowa, have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Sac and Fox Tribe of the Mississippi in Iowa, Sac and Fox Nation of Missouri in Kansas and Nebraska, and the Sac and Fox Nation of Oklahoma.

This notice has been sent to officials of the Sac and Fox Tribe of the Mississippi in Iowa, Sac and Fox Nation of Missouri in Kansas and Nebraska, and the Sac and Fox Nation of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Shirley Schermer, Burials Program Director, Office of the State Archaeologist, Eastlawn, University of Iowa, Iowa City, IA 52242, telephone (319) 384–0732, before October 12, 2000. Repatriation of the human remains to the Sac and Fox Tribe of the Mississippi in Iowa, Sac and Fox Nation of Missouri in Kansas and Nebraska, and the Sac and Fox Nation of Oklahoma may begin after that date if no additional claimants come forward.

Dated: August 23, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships

[FR Doc. 00–23384 Filed 9–11–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Polk County, IA, in the Possession of the Office of the State Archaeologist, University of Iowa, Iowa City, IA and the State Historical Society of Iowa, Des Moines, IA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Office of State Archaeologist, University of Iowa, Iowa City, IA, and an inventory of human remains and associated funerary objects in the possession of the State Historical Society of Iowa, Des Moines, IA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Office of the State Archaeologist, University of Iowa, professional staff and the State Historical Society of Iowa professional staff in consultation with representatives of the Sac and Fox Tribe of the Mississippi in Iowa, Sac and Fox Nation of Missouri in Kansas and Nebraska, and the Sac and Fox Nation of Oklahoma. A detailed assessment of the funerary objects was made by the State Historical Society of Iowa professional staff in consultation with representatives of the Sac and Fox Tribe of the Mississippi in Iowa, Sac and Fox Nation of Missouri in Kansas and Nebraska, and the Sac and Fox Nation of Oklahoma.

In 1904, human remains representing two individuals were excavated by staff of the Iowa Historical Department, now the State Historical Society of Iowa, from site 13PK54 located near the Chesterfield School in Des Moines, Polk County, IA. One set of human remains consists of a single cranium and the other set of human remains is a lock of hair. In the early 1980's, the skeletal remains were transferred to the Office of the State Archaeologist, University of Iowa, and the hair is in the State Historical Society of Iowa collections. No known individuals were identified.

The 3,081 associated funerary objects in the possession of the State Historical Society of Iowa include 200 tubular shell beads, 900 red-brown glass seed beads, 90 large clear faceted glass beads, 42 pink glass seed beads, 4 red glass seed beads, 1,100 white glass seed beads, 16 large blue faceted glass beads, 41 blue glass seed beads, 600 gray and white glass seed beads, 30 brass ball and cone hair ornaments, 5 brass ball and cone hair ornaments attached to human hair, 4 lacquered paper-mache snuff box parts, 1 preserved clump of snuff or tobacco, a fragment of bead ornament strung on copper wire, a copper wire-wrapped ornament, 8 copper bracelets, a copper alloy brooch/blanket pin, 6 iron cut nails, a bronze-handled and iron-bladed knife, 9 brass hawk bells, 3 brass buttons, a vial containing vermilion, a yellow ochre sample, 2 silk cloth remnants, and 14 wool cloth remnants.

Site 13PK54, located near the Chesterfield School in Des Moines, was a village and cemetery. The burials at this site were first found by A.A. Bennett, who unearthed 14 graves during sand quarrying operations. Mr. Bennett notified T. Van Hyning, of the Iowa Historical Museum, who proceeded to identify and excavate nine additional graves. The available documentation of the excavations is limited to an extensive interview of Mr. Van Hyning published in the Des Moines Register and Leader on March 26, 1905. Mr. Van Hyning collected three human skulls and a variety of associated funerary objects including glass beads, a bronze-handled iron-bladed knife, brass and copper ornaments, textile remnants, iron cut nails, and two paper-mache snuff boxes. While the newspaper and the 1905 annual report of the Iowa Historical Department mention three skulls, only one was accessioned into the museum collection. Only one was located in the early 1980's when the museum was analyzing human remains prior to transfer to the Office of the State Archaeologist for reburial under the state's burial protection act of 1976. It is not known what happened to the other two skulls.

Research into this site and collection was initiated in 1983. The associated funerary objects conclusively indicate an historic period burial. The style of the cut iron nails would date to the 1790's, at the earliest, and is consistent with types made circa 1805-1850. The

Sac and Fox Indian Agency, known as the Raccoon River Indian Agency, was located in the vicinity of this site from 1843-1845. Kathryn E.M. Gourley, in a 1985 report entitled ''The Raccoon River Indian Agency: Predicted Site Locations,'' concluded that site 13PK54 was ''within or near the village tentatively assigned to Wishecomaque.'' The identification of this site is based on historical documents, including military records, Indian agents' reports, local records, and original land survey reports. The types of objects are within the range of materials carried by traders authorized to provide goods to the Sac and Fox (Meskwaki) during this period. Based on the historical record, geographic location, and archeological evidence, it is reasonable to conclude that these remains and associated funerary objects are associated with the Sac and Fox (Meskwaki).

Based on the above-mentioned information, officials of the Office of the State Archaeologist, University of Iowa, have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the State Historical Society of Iowa also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 3,081 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Also, officials of the Office of the State Archaeologist, University of Iowa, and the State Historical Society of Iowa have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Sac and Fox Tribe of the Mississippi in Iowa, Sac and Fox Nation of Missouri in Kansas and Nebraska, and the Sac and Fox Nation of Oklahoma.

This notice has been sent to officials of the Sac and Fox Tribe of the Mississippi in Iowa, Sac and Fox Nation of Missouri in Kansas and Nebraska, and the Sac and Fox Nation of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Shirley Schermer, Burials Program Director, Office of the State Archaeologist, Eastlawn, University of Iowa, Iowa City, IA 52242, telephone (319) 384-0732, or Jerome Thompson, State Historical Society of Iowa, New Historical Building, 600 East Locust, Des Moines, IA 50319-0290, telephone (515) 281-4221, before October 12, 2000. Repatriation of the human remains and associated funerary objects to the Sac and Fox Tribe of the Mississippi in Iowa, Sac and Fox Nation of Missouri in Kansas and Nebraska, and the Sac and Fox Nation of Oklahoma may begin after that date if no additional claimants come forward.

Dated: August 23, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships

[FR Doc. 00–23383 Filed 9–11–00 ; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Sandoval County, NM in the Control of the Bureau of Indian Affairs, Department of the Interior, Washington, DC and in the Possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the control of the Bureau of Indian Affairs, Department of the Interior, Washington, DC, and in the possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by University of Denver Department of Anthropology and Museum of Anthropology professional staff, a contract physical anthropologist, and the New Mexico State Archaeologist, in consultation with representatives of the Pueblo of Jemez, the Pueblo of Acoma, and the Pueblo of Zia.

At an unknown date, human remains representing one individual were recovered by an unknown individual from Old Zia Pueblo, Sandoval County, New Mexico, within the exterior boundaries of the Zia Pueblo reservation. According to an account written by Theodore Sowers, Ray Salas, Governor of the Pueblo of Zia, gave the remains to Mr. Sowers in the late 1930's or early 1940's, although the circumstances under which this transfer occurred are not described. It is not clear whether Mr. Salas was acting in his capacity as an elected Tribal official when he gave the remains to Mr. Sowers. Mr. Sowers was a graduate of the University of Denver, and, in 1995, his daughters donated the remains to the University of Denver so that they could be repatriated. The identity of this individual is not known. There are no associated funerary objects.

Oral history, archeological evidence, and ethnohistoric documents have identified Old Zia as a group of four abandoned villages that were occupied by the Zia people from approximately A.D. 1250 to 1800. Upon the abandonment of these villages, their occupants moved to the remaining village, which is the present-day Pueblo of Zia. These remains came from one of the four Old Zia sites, but it is impossible to determine which site. The cultural, social, linguistic, and historic continuity of affiliation between the Pueblo of Zia and people of Old Zia is attested by evidence from oral history presented during the consultations, and supported by the ethnological data and historic accounts of the Spanish colonizers.

Based on the above-mentioned information, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Also, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Pueblo of Zia.

This notice has been sent to officials of the Pueblo of Jemez, the Pueblo of Acoma, the Pueblo of Zia, and the Bureau of Indian Affairs. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Jan I. Bernstein, Collections

Manager and NAGPRA Coordinator, University of Denver Museum of Anthropology, 2000 Asbury, Sturm Hall S-146, Denver, CO 80218-2406, email jbernste@du.edu, telephone (303) 871-2543, before October 12, 2000. Repatriation of the human remains to the Pueblo of Zia may begin after that date if no additional claimants come forward.

Dated: August 22, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–23382 Filed 9–11–00; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–706 (Review)]

Canned Pineapple From Thailand

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct a full five-year review concerning the antidumping duty order on canned pineapple from Thailand.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(5)) to determine whether revocation of the antidumping duty order on canned pineapple from Thailand would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: September 1, 2000.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On September 1, 2000, the Commission determined [1] that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that both domestic and respondent interested party group responses to its notice of institution (65 FR 25363) were adequate.

A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: September 5, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–23335 Filed 9–11–00; 8:45 am]

BILLING CODE 7020–02–P

[1] Commissioner Jennifer A. Hillman is not participating in this five-year review.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA–702 (Review)]

Ferrovanadium and Nitrided Vanadium From Russia

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct a full five-year review concerning the antidumping duty order on ferrovanadium and nitrided vanadium from Russia.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on ferrovanadium and nitrided vanadium from Russia would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: September 1, 2000.

FOR FURTHER INFORMATION CONTACT: George Deyman (202–205–3197), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On September 1, 2000, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that both domestic and respondent interested party group responses to its notice of institution (65 F.R. 25363) were adequate.

A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: September 5, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–23336 Filed 9–11–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–696 (Review)]

Pure Magnesium From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines,[2] pursuant to section 751(c) of the Tariff Act of 1930

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Askey dissenting.

(19 U.S.C. § 1675(c)), that revocation of the antidumping duty order on pure magnesium from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on April 3, 2000 (65 FR 17531, April 3, 2000) and determined on July 6, 2000 that it would conduct an expedited review (65 FR 45105, July 20, 2000).

The Commission transmitted its determination in this review to the Secretary of Commerce on August 31, 2000. The views of the Commission are contained in USITC Publication 3346 (August 2000), entitled Pure Magnesium from China: Investigation No. 731–TA–696 (Review).

Issued: September 5, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–23337 Filed 9–11–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

September 5, 2000.

The Department of Labor has submitted the following (see below) emergency processing public information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub.L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by October 12, 2000. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Departmental Clearance Office, Ira Mills (202) 219–5095, x 113. Comments and questions about the ICR listed below should be forwarded to Office Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316. Written comments must be submitted to OIRA on or before October 10, 2000.

The Office of Management and Budget 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 submissions of response.

Agency: Employment and Training Administration.

Title: One-Stop Labor Market Information Grant Reporting.

OMB Number: 1205–ONEW.

Affected Public: States.

Form	No. of respondents	Responses per year	Total responses	Hours per response	Total burden hours
Annual Plan	54	2	54	36	1,944
Progress Reports	54	2	108	67	648
Total	54	3	162	43	2,592

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Description: ETA seeks approval of an annual plan narrative and two progress reports as requirements for One Stop Labor Market Information grants. This information will be used by the Department of Labor and its managing State partners to assure that a employment statistics system required by Wagner Peyser as amended by the Workforce Investment Act meets the needs of its customers. States seeking grants are requested to provide an annual grant narrative that provides specific information on how the grant funds will accomplish any of seven priorities developed by the Department through the Workforce Information Council. In addition the States are requested to provide a brief progress report twice during the grant period which explains the progress of the grantee in accomplishing the plan.

Ira Mills,

Departmental Clearance Officer.

[FR Doc. 00–23347 Filed 9–11–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,493 and NAFTA–3802]

Levi Strauss & Company, RMQ Lab, Pellicano Finishing Plant, El Paso, Texas; Notice of Negative Determination Regarding Application for Reconsideration

By application dated August 1, 2000, filed by the petitioners, and August 21, 2000, filed by the company, administrative reconsideration is requested regarding the Department's negative determination of eligibility for workers of the subject firm to apply for Trade Adjustment Assistance (TAA) under petition number TA–W–37,493 and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA) under petition number NAFTA–3802. The denial notices were signed on July 17, 2000, and published in the **Federal Register** on August 1, 2000 (65 FR 46954).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) if it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioners report that prior to the Pellicano plant closure, workers tested both domestic and foreign production. When the Pellicano plant closed, the workers at the Raw Material Quality Department (RMQ) lab in El Paso were left with only testing Mexican contractor's production and domestic and Mexican fabric. The petitioners state that there was no lab in Powell, Tennessee, until the El Paso lab shut down.

The company official's request for reconsideration emphasizes that Levi Strauss & Company closed six production plants in the El Paso area. Because of these closures, Levi Strauss & Company closed the El Paso Pellicano lab, and all employees were terminated in October 1999. The company states that imports contributed to the decision to close the six plants and the Pellicano lab. The company further states that an RMQ was created in Powell, Tennessee, using fewer workers than in the El Paso RMQ.

The workers at Levi Strauss & Company, RMQ lab, at the Pellicano Finishing Plants, El Paso, Texas, engaged in testing and quality control of denim products were denied eligibility to apply for TAA and NAFTA–TAA based on the findings that worker separations were attributable to the company's decision to have the RMQ lab work done at another domestic facility of Levi Strauss.

The petitioners and the company official both assert that some former El Paso lab employees are eligible for NAFTA–TAA. Our petition records do not show that a NAFTA–TAA certification has been issued for the RMQ workers.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C. this 30th day of August 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 00–23343 Filed 9–11–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of August, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–37,744; Sommers, Inc., Sommers Ribbon Co., Stroudsburg, PA
TA–W–37,728; Hill Knitting Mills, Richmond Hill, NY
TA–W–37,600; Trinity Industries, Inc., Mt. Orab, OH
TA–W–37,828; Johnstown Corp., Johnstown, PA
TA–W–37,863; Morton Forest Products, a/k/a Tree Source, Morton, WA
TA–W–37,439; National Ceramics, Inc., Ceramic Fashions, Inc., Cunningham, KY
TA–W–37,780; Memphis Chair Co., Gainesboro, TN
TA–W–37,797; Craft Houses International, Inc., Kalkaska, MI
TA–W–37,884; Rycraft, Inc., Corvallis, OR

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–37,920; Chic-A-Dee Packing Corp., Monmouth ME
TA–W–37,921 & A; ACS Shared Service, Inc., Berea, KY and Richmond, KY
TA–W–37,812; Amway Corp., Buy-Out Quality Assurance, Ada, MI
TA–W–37,818; ARCO Marine, Inc., Long Beach, CA
TA–W–37,908; Sweatt Industries, d/b/a Sentry Service, Odessa, TX
TA–W–37,943; Ryan International Airlines, Denver, CO
TA–W–37,829; Bucilla Corp., Hazleton, PA
TA–W–37,951; William Energy Service Co., Houston, TX
TA–W–37,768; Big B Valve Repair and Service, Inc., Laurel, MS
TA–W–37,817; DHL Worldwide Express, Houston, TX

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–37,824; Avian Farms International, Inc., Waterville, MI
TA–W–37,879; Beaulieu of America, Hollytex Div., Anadarko, OK
TA–W–37,905; Cooper Industries, Lighting Div., Elk Grove Village, IL
TA–W–37,805; Eastern Tool and Die, Inc., Newington, CT
TA–W–37,914; Joseph Timber Co LLC, Joseph, OR
TA–W–37,901; Oxo Welding Equipment Co., Troy, OH
TA–W–37,676; Schreiber Foods, Inc., Monroe, WI
TA–W–37,857; Optimum Air Corp., Malta, NY
TA–W–37,877; Swiss Maid, Inc., Greentown, PA
TA–W–37,742B; Key Industries, Inc., Quilting Div., Buffalo, NY
TA–W–37,900 & A, B, C; Oxy USA, Inc., Houston, TX, Aransas Pas, TX, Liberal, KS and Venice, LA
TA–W–37,745 & A; Louisiana Pacific Corp., Ketchikan Pulp Co., Ketchikan Sawmill, Ketchikan, AK and Timber Div., Prince of Wales Island, AK

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–37,890; Thomson Consumer Electronics, Dunmore, PA

The investigation revealed that criteria (2) has not been met. Sales or production, or both, did not decline during the relevant period as required for certification.

TA–W–37,777; Pearl Brewing Co., San Antonio, TX

The investigation revealed that criteria (2) and criteria (3) have not been

met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–37,930; The Stanleyworks, Hardware Plant, Richmond, VA: July 25, 1999
TA–W–37,882; Walpole, Inc., A Div. of Marion Technologies, Inc., Mt. Holly, NJ: June 30, 1999
TA–W–37,947; Charles Craft, Inc., Wadesboro Plant, Wadesboro, NC: July 25, 1999
TA–W–37,823; Carleton Woolen Mills, Inc., Winthrop, ME: July 23, 2000
TA–W–37,927; Deka Medical, Triad Div., Waynesville, NC: July 31, 1999
TA–W–37,936; Allied Signal/Honeywell Specialty Chemicals, Smethport, PA: July 20, 1999
TA–W–37,816; Multiplex Technology, Inc., Brea, CA: June 13, 1999
TA–W–37,832; Nestaway Corp., Cleveland, OH: June 22, 1999
TA–W–37,842; Siemens, Norwood, OH: June 14, 1999
TA–W–37,810; Buckeye Apparel, Coldwater, OH: June 2, 1999
TA–W–37,864; Weinmann, Inc., Olney, IL: June 22, 1999
TA–W–37,924; Banta Healthcare Group, Eaton Park, FL: July 17, 1999
TA–W–37,851; J. Angela Dress Corp., Brooklyn, NY: June 19, 1999
TA–W–37,751; Hoff Forest Products, Meridian, ID: May 24, 1999
TA–W–37,736; Transsouthern Leasing, a/k/a Dallas Manufacturing, Selma, AL: May 15, 1999
TA–W–37,853; VF Workwear, Inc., Bassville, MS: June 22, 1999
TA–W–37,918; Trans Regional Manufacturing Co., Inc., Blackville SC: June 15, 1999
TA–W–37,897; Osram Sylvania, St. Marys, PA: July 12, 1999.
TA–W–37,912; Aquatech, Inc., McMinnville, TN: July 6, 1999.
TA–W–37,748; Coats North America, Anniston, AL: May 23, 1999.
TA–W–37,888; Federal Mogul Wiper Products, Michigan City, IN: July 6, 1999.
TA–W–37,790; Empire Steel Castings, Inc., Reading, PA: June 5, 1999.
TA–W–37,874; Frink America, Inc., Clayton, NY: June 15, 1999
TA–W–37,705; Competitive Engineering, Inc., Tucson, AZ: May 5, 1999.
TA–W–37,695; Ryan Press, Ogdensburg, NY: April 27, 1999.
TA–W–37,742 and A; Key Industries, Inc., Fort Scott, KS and Hermitage, MO: May 22, 1999.
TA–W–37,792; Southwire Co., Smelter and Tankhouse, Carrollton, GA: May 23, 1999.
TA–W–37,849; Seagate Technology, Inc., Research and Design Center, Oklahoma City, OK: June 26, 1999
TA–W–37,772; Tech Center Manufacturing, Goodyear Tire and Rubber, Akron, OH: June 5, 1999.
TA–W–37,902; Toastmater, Ingraham Time Products Div., Laurinburg, NC: July 7, 1999.
TA–W–37,795; Arlington Apparel Co-Op, LLC, Arlington, GA: June 2, 1999.
TA–W–37,872; Chipman-Union, Inc., Belmont, NC: June 28, 1999.
TA–W–37,773; Alfa Laval Separation, Inc., Warminster, PA: August 4, 2000.
TA–W–37,767; Ingersoll-Rand Co., Rock Drill Div., Roanoke, VA: May 26, 1999.
TA–W–37,848; Genicom Corp., Temple, TX: June 16, 1999.
TA–W–37,875; Personal Products Co., Wilmington, IL: June 28, 1999
TA–W–37,793; Hitachi Koki Imaging Solutions, Inc., (Formerly Known as Data Products), Simi Valley, CA: June 2, 1999.
TA–W–37,839; Congoleum Corp., Trainer, PA: June 15, 1999.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of August, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm the Canada or Mexico during the relevant period.

NAFTA–TAA–03950; Pearl Brewing Co., San Antonio, TX
NAFTA–TAA–03980; Morton Forest Products, a/k/a Tree Source, Morton, WA
NAFTA–TAA–04020; Thomson Consumer Electronics, Inc., A.T.O Div., Dunmore, PA
NAFTA–TAA–04059; Beaulieu of America, Hollytex Div., Anadarko, OK
NAFTA–TAA–03998, Trinity Industries, Inc., Mt. Orab, OH
NAFTA–TAA–04003; Wallowa Forest Products, Wallowa, OR
NAFTA–TAA–03965; Memphis Chair Co., Gainesboro, TN
NAFTA–TAA–03978 & A; Key Industries, Inc., Quilting Dept., Buffalo, MO and Hermitage, MO
NAFTA–TAA–04007; Key Industries, Inc., Fort Scott, KS
NAFTA–TAA–04042; Joseph Timber Co., LLC, Joseph, OR
NAFTA–TAA–03970; Craft House International, Inc., Kalkaska, MI
NAFTA–TAA–04058; Cloverland Manufacturing, Inc., Escanaba, MI
NAFTA–TAA–03902; Berstone Knitting Mills, Brooklyn, NY
NAFTA–TAA–04053; Ochoco Lumber Co., Prineville, OR
NAFTA–TAA–04005; Graphic Vinyl Products, Inc., Newark, NJ

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–4052; Chief Tonasket Growers, Tonasket, WA
NAFTA–TAA–04091; Humpty Dumpty Snack Foods USA, Inc., Scarborough, ME

The investigation revealed that workers of the subject firm did not

produce an article within the meaning of Section 250 (a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–04021; Cooper Industries, Lighting Div., Elk Grove Village, IL: July 10, 1999.
NAFTA–TAA–04010; Personal Products Co., Wilmington, IL: June 28, 1999.
NAFTA–TAA–03982; Friedman Bag Co., Textile Div., Portland, OR: June 19, 1999.
NAFTA–TAA–04012; Walpole, Inc., A Div. of Marino Technologies, Inc., Mt. Holly, NJ: June 30, 1999.
NAFTA–TAA–04056; Medical Parameters, Inc., d/b/a Arrow/Walrus, Woburn, MA: July 24, 1999.
NAFTA–TAA–04092; Ledalite Architectural Products, Genlyte-Thomas Group, Kent, WA: August 9, 1999.
NAFTA–TAA–04030; C and M Corp., Wauregan, CT: July 13, 1999.
NAFTA–TAA–4044; Tri State Data Products, Feasterville, PA: July 24, 1999.
NAFTA–TAA–04054; Victor Equipment Co., Abilene, TX: August 3, 1999.
NAFTA–TAA–04078; Wolverine Worldwide, Inc., Kirksville, MO: July 17, 1999.

I hereby certify that the aforementioned determinations were issued during the month of August, 2000. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 5, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 00–23344 Filed 9–11–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3721]

Rockwell Automation; Sheet Metal Fabrication Department; Euclid Plant; Euclid, Ohio; Notice of Revised Determination on Reopening

By letter of July 28, 2000, Local 737 of the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO (IUE), request administrative reconsideration of the Department's Negative Determination Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance (NAFTA–TAA) applicable to workers and former workers of Rockwell Automation, Euclid Plant, Euclid, Ohio. The denial was issued on July 17, 2000, and was published in the **Federal Register** on August 1, 2000 (65 FR 46954).

The IUE Local 737 presents evidence that the shift in production to Canada of the housing (cabinets) produced by workers in the Sheet Metal Fabrication Department, occurred in the early part of 1999, not 1998 as indicated in the Department's negative determination for the Rockwell Automation petition. Therefore, worker separations occurred within one year of the date of the petition.

At the subject firm's Euclid, Ohio plant, the workers in the Sheet Metal Fabrication Department are separately identifiable from those workers at the plant engaged in employment related to wiring and testing of the final product, control cabinets.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that the workers of Rockwell Automation, Sheet Metal Fabrication Department, Euclid Plant, Euclid, Ohio, were adversely affected by the shift in production of sheet metal cabinets to Canada. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

''All workers of Rockwell Automation, Sheet Metal Fabrication Department, Euclid Plant, Euclid, Ohio, engaged in employment related to the production of sheet metal cabinets, who became totally or partially separated from employment on or after February 4, 1999, through two years from the date of certification, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.''

Signed at Washington, D.C. this 30th day of August 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 00–23345 Filed 9–11–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250 (b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request if filed in writing with the Director of DTAA not later than September 22, 2000.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown below not later than September 22, 2000.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, D.C. this 30th day of August, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

Appendix

Subject firm	Location	Date received at Governor's Office	Petition Number	Articles produced
Stanly Knitting Mills (Co.)	Oakboro, NC	08/07/2000	NAFTA–4,061	jogging suits, tops & knit dresses.
Penn Machine—Marmon Group (USWA)	Johnstown, PA	08/08/2000	NAFTA–4,062	locomotive products.
RMH Teleservices (Wkrs)	Sergeant Bluff, IA	06/01/2000	NAFTA–4,063	teleservices.
General Motors—Desert Proving Ground (Co.).	Mesa, AZ	08/10/2000	NAFTA–4,064	weather testing.
Academy Broadway (Co.)	Pine Knot, KY	08/08/2000	NAFTA–4,065	sleeping bags.
Lund Induystries (Wkrs)	Anoka, MN	08/08/2000	NAFTA–4,066	fiberglass truck accessories.
ABC—NACO (IBM)	Superior, WI	08/10/2000	NAFTA–4,067	railroad truckwork products.
Rock Tenn (PACE)	Madison, WI	07/27/2000	NAFTA–4,068	folding cartons.
Alaris Medical Systems (wkrs)	Creedmoor, NC	08/11/2000	NAFTA–4,069	disposable medical devices.
Consolidated Metco Rivergate (IAMAW)	Porland, OR	08/10/2000	NAFTA–4,070	parts for trucks.
Telxon Corporation (Co.)	Houston, TX	08/11/2000	NAFTA–4,071	repair of handheld wireless computers.
Santtony Wear (Co.)	Rockingham, NC	08/11/2000	NAFTA–4,072	undergarments.
Smith and Nephew (Co.)	Charlotte, NC	08/11/2000	NAFTA–4,073	synthetic orthopedic cast tape.
Jockey International (C0.)	Randleman, NC	08/07/2000	NAFTA–4,074	women's sheer hosiery & tights.
Hobman—Model Rectifier (Wkrs)	Jim Thorpe, PA	08/14/2000	NAFTA–4,075	printed circuit boards.
Reynolds Metals (IAMAW)	Troudale, OR	08/09/2000	NAFTA–4,076	aluminum.
Movies 99—New Movie Corp. (Wkrs)	Salk Lake City, UT	08/08/2000	NAFTA–4,077	film, television & commercial production.
Wolverine World Wide (UNITE)	Kirksville, MO	08/09/2000	NAFTA–4,078	work boots.
Royal Oak Enterprises (Wkrs)	Licking, MO	08/14/2000	NAFTA–4,079	lump charcoal.
Louisiana Pacific (Co)	Hayden Lake, ID	07/31/2000	NAFTA–4,080	lumber.
Mountaineer Precision Tool & Mold (C0.)	Waynesville, NC	08/15/2000	NAFTA–4,081	injection molds for plastic parts.
Pillowtex (UNITE)	Salisbury, NC	08/14/2000	NAFTA–4,082	bed sheeting materials.
Canon Business Machnes (Co.)	Costa Mesa, CA	08/14/2000	NAFTA–4,083	electronic business machines.
WP Industries (Wkrs)	South Gate, CA	08/14/2000	NAFTA–4,084	pottery.
GRT (Wkrs)	Sun Valley, CA	07/24/2000	NAFTA–4,085	plastic injection molding supplies.
Eagle Eaton Leonard—Eagle Precision (Co.)	Carlsbad, CA	08/07/2000	NAFTA–4,086	tube bending machinery.
Astro Design (CBO)	Seattle, WA	08/18/2000	NAFTA–4,087	active wear garments.
Leoni Wiring Systems (Co.)	Tuscon, AZ	08/11/2000	NAFTA–4,088	cables.
Tyco Electronics (Wkrs)	Sanford, ME	08/16/2000	NAFTA–4,089	electronic connectors.
Midwest Electric Products (Co.)	Mankato, MN	08/09/2000	NAFTA–4,090	electrical equipment.
Humpty Dumpty Snack Food (Co.)	South Portland, ME	08/16/2000	NAFTA–4,091	potato chips.
Ledalite Architectural Products (Wkrs)	Kent, WA	08/18/2000	NAFTA–4,093	linear lighting.
Central Point Lumber (Wkrs)	Central Point, OR	08/14/2000	NAFTA–4,093	stud lumber.
A.O. Smith (Co.)	gordonsville, Tn	08/15/2000	NAFTA–4,094	electric motors.
Trust Joict (Wkrs)	Engene, OR	08/17/2000	NAFTA–4,095	i-beams.
Roseburg Forest Products (Co.)	Roseburg, OR	08/17/2000	NAFTA–4,096	pondersoa pine & sugar pine shop.
Trinity Industries (Wkrs)	Asheville, NC	08/18/2000	NAFTA–4,097	railcar parts.
Savane International (Co.)	El Paso, TX	08/22/2000	NAFTA–4,098	pants.
Adirondack Knitting (Co.)	New York, NY	08/29/2000	NAFTA–4,099	home furnishings.
Great Lakes Chemical—Polymer Additives (Wkrs).	Laredo, TX	08/23/2000	NAFTA–4,100	antimony oxide.
Garden Grow (The) (Co.)	Wilsonville, OR	08/24/2000	NAFTA–4,101	packet seed.
Freightliner (IAM)	Portland, OR	08/23/2000	NAFTA–4,102	trucks.
Burlington Industries (Co.)	Stokesdale, NC	08/24/2000	NAFTA–4,103	comforters, bedroom accessories.
Hennessee Apparel (Co.)	Deactur, TN	08/28/2000	NAFTA–4,104	sweatshirts, t-shirts & sweaters.
Lucchese (Wkrs)	El Paso, TX	08/23/2000	NAFTA–4,105	boots.
United States Leather—Lackawanna Leath (Co.).	El Paso, TX	08/22/2000	NAFTA–4,106	finished leather.
American Bag (Co.)	Stearns KY	08/23/2000	NAFTA–4,107	airbads.
Parker Seal (Wkrs)	Berea, KY	08/21/2000	NAFTA–4,108	o-ring & shape seals.
Universal Garment Finishing (Wkrs)	Louisville, KY	08/21/2000	NAFTA–4,109	garment finishing services.
JBL—Harman (Wkrs)	Northridge, CA	08/24/2000	NAFTA–4,110	loudspeaker components & cabinets.
Hayden Industrial Products (Co.)	Corona, CA	08/28/2000	NAFTA–4,111	truck cooling systems.
Harris Interactice (Wkrs)	Vestal, NY	08/22/2000	NAFTA–4,112	market research surveys.
U.S. Textiles (Wkrs)	Newland, NC	08/03/2000	NAFTA–4,113	ladies pantyhose.
Lotus Designs (Wkrs)	Weaverville, NC	08/23/2000	NAFTA–4,114	life vest.
International Paper (Wkrs)	Monticello, AR	08/07/2000	NAFTA–4,115	paper & poly bags.
WTTC (Wkrs)	Raymondville, TX	08/22/2000	NAFTA–4,116	cut denim materials.

Subject firm	Location	Date received at Governor's Office	Petition Number	Articles produced
TRW (Wkrs)	Danville, PA	08/24/2000	NAFTA–4,117	valves.
Louisiana Pacific (Wkrs)	Hines, OR	08/24/2000	NAFTA–4,118	wood products.
Bulk Manufacturing (Co.)	Plant City, FL	08/15/2000	NAFTA–4,119	cxargo tanks.
Corlair Corporation (Co.)	Piedmont, MO	08/28/2000	NAFTA–4,120	leather vinyl business accessories.
Terex Corporation (Co.)	Tulsa, OK	08/25/2000	NAFTA–4,121	dump bodies, front axles.

[FR Doc. 00–23346 Filed 9–11–00; 8:45 am]

BILLING CODE 4510–30–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on September 18, 2000. The meeting will begin at 12:30 p.m. and continue until conclusion of the Board's agenda.

LOCATION: San Francisco Marriott, 55 Fourth Street, San Francisco, California 94103.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c) (2), (4), (6) and (10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR § 1622.5 (a), (c), (e) and (h)]. A copy of the LSC Senior

Assistant General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED: Open Session

1. Approval of agenda.
2. Approval of the minutes of the Board's meeting of June 26, 2000.
3. Approval of the minutes of the executive session of the Board's meeting of June 26, 2000.
4. Approval of minutes of the Board's telephonic meeting of August 1, 2000.
5. Scheduled Public Speakers.
6. Chairman's Report.
7. Members' Report.
8. Inspector General's Report.
9. President's Report.
10. Consider and act on the report of the Board's Committee on Provision for the Delivery of Legal Services.
11. Consider and act on the report of the Board's Finance Committee.
12. Consider and act on the report of the Board's Operations and Regulations Committee.
13. Establish the Board's FY 2000 Annual Performance Reviews Committee to conduct the fiscal year 2000 annual performance appraisals of LSC's President and Inspector General.
14. Consider and act on the establishment of an independent panel, and delegation to the Board Chair of authority to appoint the membership thereof, to study and report to the Board on the impact of LSC restrictions on the services that LSC grantees provide to clients.
15. Consider and act on report by OIG Liaison John Erlenborn concerning OIG issuance and enforcement of subpoenas on Georgia programs.
16. Consider and act on proposed change of the currently scheduled March 2001 Board meeting date.

Closed Session

17. Briefing [1] by the Inspector General on the activities of the Office of Inspector General.
18. Consider and act on the Office of Legal Affairs' report on potential and pending litigation involving LSC.
19. Consider and act on an LSC officer's request for Board consent to his performing some limited services to a non-LSC entity during his own time.

Open Session

20. Consider and act on other business.
21. Public Comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8800.

Dated: September 7, 2000.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 00–23515 Filed 9–8–00; 2:11 pm]

BILLING CODE 7050–01–P

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 C.F.R. § 1622.2 & 1622.3

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Finance Committee

TIME AND DATE: The Finance Committee of the Legal Services Corporation Board of Directors will meet on September 17, 2000. The meeting will begin at 4:30 p.m. and continue until the Committee concludes its agenda.

LOCATION: San Francisco Marriott, 55 Fourth Street, San Francisco, California 94103.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of June 25, 2000.
3. Report on LSC's Consolidated Operation Budget, Expenses and Other Funds Available through July 31, 2000.
4. Report on the projected operating expenses for fiscal year 2000 based on operating experiences through June 30, 2000.
5. Report on the internal budgetary adjustments.
6. Consider and act on the President's recommendations for Consolidated Operating Budget reallocations.
7. Consider and act on proposed Temporary Operating Budget for Fiscal Year 2001.
8. Briefing by Randi Youells, Vice President for Programs, and Carolyn Worrell of LSC's Office of Program Performance, on changes in LSC's services in Indian Country.
9. Consider and act on budget mark for fiscal year 2002.
10. Consider and act on other business.
11. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8800.

September 7, 2000.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 00–23516 Filed 9–8–00; 2:11 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Operations & Regulations Committee

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation Board of Directors will meet on September 18, 2000. The meeting will begin at 9:45 a.m. and continue until the Committee concludes its agenda.

LOCATION: San Francisco Marriott, 55 Fourth Street, San Francisco, California 94103.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of June 25, 2000.
3. Consider and act on a proposed Rulemaking Protocol for recommendation to the Board.
4. Consider and act on revised **Federal Register** notice announcing and requesting comment on proposed Property Acquisition and Management Manual.
5. Consider and act on other business.
6. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8800.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 00–23517 Filed 9–8–00; 2:11 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Committee on Provision for the Delivery of Legal Services

TIME AND DATE: The Committee on Provision for the Delivery of Legal Services of the Legal Services Corporation Board of Directors will meet on September 17, 2000. The meeting will begin at 10:00 a.m. and continue until the Committee concludes its agenda.

LOCATION: San Francisco Marriott, 55 Fourth Street, San Francisco, California 94103.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of June 25, 2000.
3. Presentation on State Planning by Senior Program Counsel for State Planning Robert Gross and the following panel of guests:
   - Robert Clyde, Executive Director, Ohio Legal Assistance Foundation;
   - Joseph Dailing, Executive Director, Prairie State Legal Services (Illinois);
   - Estella Casas, Executive Director, Greater Bakersfield Legal Assistance Foundation (California).
4. Report by Glen Rawdon, of LSC's Office of Program Performance, on LSC's technology initiative and grant awards.
5. Briefing by Randi Youells, Vice President for Programs, and Carolyn Worrell of LSC's Office of Program Performance, on changes in LSC's services in Indian Country.
6. Report by Randi Youells, Vice President for Programs, on the development of revisions to the CSR system (the LSC Results Project) and the development of new performance measures (the LSC Performance Project).
7. Report by Randi Youells, Vice President for Programs, on LSC's Diversity Initiatives.
8. Consider and act on other business.
9. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Secretary of the Corporation, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8800.

Dated: September 7, 2000.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary

[FR Doc. 00–23518 Filed 9–8–00; 2:12 pm]

BILLING CODE 7050–01–P

MARINE MAMMAL COMMISSION

Sunshine Act Meetings

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Tuesday, October 10, 2000, from 8:30 a.m. to 10:00 a.m. The public sessions of the Commission and the Committee meeting will be held on Tuesday, October 10, from 10:15 a.m. to 5:15 p.m., on Wednesday,October 11, from 8:30 a.m. to 5:00 p.m., and on Thursday, October 12, from 8:30 a.m. to 3:45 p.m.

PLACE: The TradeWinds Sandpiper Hotel, 6000 Gulf Boulevard, St. Pete Beach, Florida 33706; Phone number 727/360–5551. Fax number 727/562–1282.

STATUS: The executive session will be closed to the public. At it, matters relating to international negotiations in process, personnel, and the budget of the Commission will be discussed. All other portions of the meeting will be open to public observation. Public participation will be allowed as time permits and as determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: The Commission and Committee will meet in public session to discuss a broad range of marine mammal matters. The focus of the meeting will be on species that occur in waters along the Atlantic and Gulf of Mexico coasts of the United States. While subject to change, major issues that the Commission plans to consider at the meeting include: research and management issues related to the Florida population of West Indian manatees, the Atlantic and Gulf populations of bottlenose dolphins, northern right whales, and the effects of noise on marine mammals.

CONTACT PERSON FOR MORE INFORMATION: Robert H. Mattlin, Executive Director, Marine Mammal Commission, 4340 East-West Highway, Room 905, Bethesda, MD 20814, 301/504–0087.

SUPPLEMENTARY INFORMATION: This is a second notice of the Commission's 2000

meeting and, except for the contact information, does not constitute any significant change in the specifics of the meeting as originally published in the July 12, 2000, notice (65 FR 43039).

Dated: September 8, 2000.

Robert H. Mattlin,

Executive Director.

[FR Doc. 00–23460 Filed 9–8–00; 10:13 am]

BILLING CODE 6820–31–M

MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities; Proposed Collection

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Merit Systems Protection Board's request for a three year extension of approval of its optional appeal form, Optional Form 283 (Rev. 10/94) has been forwarded to the Office of Management and Budget (OMB) for review and comment. The appeal form is currently displayed in 5 CFR part 1201, appendix I, and on the MSPB Web Page at http://www.mspb.gov/foia/applform.pdf.

In this regard, we are soliciting comments on the public reporting burden. The reporting burden for the collection of information on this form is estimated to vary from 20 minutes to one hour per response, with an average of 30 minutes, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

ESTIMATED ANNUAL REPORTING BURDEN

5 CFR section	Annual number of respondents	Frequency per response	Total annual responses	Hours per response (average)	Total hours
1201 and 1209	9,000	1	9,000	.5	4,500

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the address shown below. Please refer to OMB Control No. 3124–0009 in any correspondence.

DATES: Comments must be received on or before (insert date 30 days from publication).

ADDRESSES: Copies of the appeal form may be obtained from the MSPB Web site at *http://www.mspb.gov/foia/applform.pdf,* any MSPB regional or field office, or from the Office of the Clerk, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419, by calling (202) 653–7200. Comments concerning the paperwork burden should also be addressed to Mr. Arlin Winefordner, Office of the Clerk, and to the Office of Information and Regulatory Affairs, Office of management and Budget, Attention: Desk Officer for MSPB, 725 17th Street NW., Washington, DC 20503.

Dated: September 12, 2000.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 00–23283 Filed 9–11–00; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–107]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: Dates published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: John Kusmiss, Patent Counsel, NASA Management Office-JPL, 4800 Oak Grove Drive, Mail Stop 180–801, Pasadena, CA 91109; Tel. (818) 354–7770.

NASA Case No. NPO 19289–1: On-Chip Learning in VLSI Environment;

NASA Case No. NPO–20403–1: Inrush Current Control Circuit;

NASA Case No. DRC 099–006: Algorithm and Test Technique for a Frequency Excitation Using an Optimized Multiple Frequency Sweep Waveform (Sweepstack).

Dated: September 6, 2000.

Edward A. Frankle,

General Counsel.

[FR Doc. 00–23362 Filed 9–11–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

The National Credit Union Administration Board determined that its business required the deletion of the following two items from the previously announced closed meeting (**Federal Register,** Vol. 65, No. 173, page 54078, Wednesday, September 6, 2000) scheduled for Thursday, September 7, 2000.

1. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).

The Board voted two-to-one, Board Member Wheat voting no, that agency business required that this item be deleted from the closed agenda and that no earlier announcement of this change was possible.

3. Field of Membership Appeal. Closed pursuant to exemptions (8) and (9)(A)(ii).

The Board voted unanimously that agency business required that this item be deleted from the closed agenda and that no earlier announcement of this change was possible.

The previously announced closed items were:

1. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).

2. Two (2) Administrative Actions under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

3. Field of Membership Appeal. Closed pursuant to exemptions (8) and (9)(A)(ii).

4. Three (3) Personnel Matters. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 00–23459 Filed 9–7–00; 5:08 pm]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 et seq.), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed continuing information collection

DATES: Written comments on this notice must be received by November 13, 2000 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: For further information or for a copy of the collection instrument and instructions contact Ms. Suzanne H. Plimpton, Reports Clearance Officer, via surface mail: National Science Foundation, ATTN: NSF Reports Clearance Officer, Suite 295, 4201 Wilson Boulevard, Arlington, VA 22230; telephone (703) 292–7556; e-mail splimpto@nsf.gov; or FAX (703) 292–9188. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: 1999 Survey of Doctorate Recipients.

OMB Control No.: 3145–0020.

Expiration Date of Approval: April 30, 2001.

Abstract

The Survey of Doctorate Recipients (SDR) has been conducted biennially since 1973. For the 2001 cycle, a sample of individuals under the age of 76 who have earned doctoral degrees in science and engineering from U.S. institutions will be surveyed. The purpose of the study is to provide national estimates describing the relationship between education and employment for Ph.D. recipients in science and engineering. The study is one of three components of the Scientists and Engineers Statistical Data System (SESTAT), which produces national estimates of the size and characteristics of the nation's science and engineering population.

The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to "* * * provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government." The Survey of Doctorate Recipients is designed to comply with these mandates by providing information on the supply and utilization of doctorate level scientists and engineers. Collected data will be used to produce estimates of the characteristics of these individuals. They will also provide necessary input into the SESTAT labor force data system, which produces national estimates of the size and characteristics of the country's science and engineering population. The Foundation uses this information to prepare congressionally mandated reports such as Women and Minorities in Science and Engineering and Science and Engineering Indicators. A public release file of collected data, designed to protect respondent confidentiality, is expected to be made available to researchers on CD–ROM and on the World Wide Web.

Questionnaires will be mailed in April 2001 and nonrespondents to the mail questionnaire will be contacted by computer assisted telephone interviewing (CATI). The survey will be collected in conformance with the Privacy Act of 1974 and the individual's response to the survey is voluntary. NSF will insure that all information collected will be kept strictly confidential and will be used only for research or statistical purposes, analyzing data, and preparing scientific reports and articles.

Expected Respondents

We will mail the survey to a statistical sample of approximately 40,000 U.S. doctorates.

Burden on the Public

The amount of time to complete the questionnaire may vary depending on an individual's circumstances; however, on average it will take approximately 25 minutes to complete the survey. We estimate that the total annual burden will be 16,666 hours during the year.

Special Areas for Review: NSF requests special review and comments in the following areas:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Foundation, including whether the information will have practical utility;

(b) The accuracy of the Foundation's estimate of the burden of the proposed collection of information;

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

(d) Ways to minimize the burden of the collection of information on those who are to respond.

Dated: September 6, 2000.

Suzanne H. Plimpton,

NSF Reports Clearance Officer.

[FR Doc. 00–23324 Filed 9–11–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–412]

Pennsylvania Power Company, Ohio Edison Company, the Cleveland Electric Illuminating Company, the Toledo Edison Company, FirstEnergy Nuclear Operating Company, Beaver Valley Power Station, Unit 2; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–73 issued to FirstEnergy Nuclear Operating Company (the licensee) for operation of the Beaver Valley Power Station, Unit 2, located in Beaver County, Pennsylvania.

The proposed amendment would revise certain 18-month surveillance requirements in the technical specifications by eliminating the condition that testing be conducted during shutdown, or during cold shutdown or refueling mode. The systems that would be affected are the emergency core cooling system (ECCS), containment depressurization and cooling system, chemical addition system, and containment isolation valve system. The proposed amendment would not change the current type and frequency of the 18-month surveillances for these systems.

Allowing testing to be performed either at shutdown or crediting testing performed at power maintains the safety analysis conclusions and allows shutdown activities to be planned which will reduce the shutdown risk.

In addition, the proposed amendment would make administrative, editorial, and format changes that have no impact on plant safety.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. *Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?*

The proposed amendment does not involve a significant increase in the probability of an accident previously evaluated because no changes are being made to any event initiator. The proposed amendment involves changes to accident mitigation system surveillance requirements. No analyzed accident scenario is being revised. The initiating conditions and assumptions for accidents described in the Updated Final Safety Analysis Report (UFSAR) remain as previously analyzed.

Certain safety related components can be tested only during plant shutdown in order to avoid a plant transient during power operation. The 18-month surveillances associated with this license amendment request also involve testing of components (*e.g.,* relays) that are coupled with safety related systems and components which interface with core cooling systems used during shutdown conditions. Performance of this testing during shutdown conditions increases the shutdown risk. Elimination of the requirement to test associated components during shutdown conditions will minimize overall plant risk by allowing credit for components that are tested at power when the testing is consistent with safe operation of the plant. Other surveillance testing on the identified systems and components is already required to be performed periodically at power which duplicates a portion of the identified 18-month surveillance tests. By allowing credit to be taken for testing accomplished while at power to meet the 18-month surveillance requirement, eliminating redundant testing, and performing that portion of the associated tests that need to be performed at shutdown, plant safety is not adversely affected and shutdown risk can be minimized.

Beaver Valley Power Station (BVPS) is actively managing operational risk using insights from the site-specific probabilistic risk assessment. Through active risk management, BVPS assesses the effect of scheduled maintenance and surveillance activities on core damage frequency. Adjustments to scheduled activities are made, when possible, to lower operational risk.

These accident mitigation systems will be demonstrated to be able to function as required on a periodic basis. Thus, the performance of the affected surveillance requirements will continue to ensure that these systems are capable of mitigating a design basis accident. Therefore, the consequence of an accident previously evaluated is not significantly increased as a result of this license amendment request.

The proposed administrative, editorial, and format changes have no impact on plant safety.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. *Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?*

The proposed amendment does not involve any physical changes to the plant or the modes of plant operation defined in the plant Technical Specifications. The proposed amendment does not involve the addition or modification of plant equipment nor does it alter the design or operation of any plant systems. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of these changes.

There are no changes in this amendment that would cause the malfunction of safety-related equipment assumed to be operable in accident analyses. No new mode of failure has been created and no new equipment performance requirements are imposed. The proposed amendment has no effect on any previously evaluated accident.

This license amendment request does not alter the surveillance type or frequency of the affected 18 month surveillance requirements for the ECCS, Containment Depressurization and Cooling System, Chemical Addition System, and Containment Isolation Valves. The license amendment request only proposes the removal of the requirement to perform the associated surveillances during shutdown conditions. Elimination of the requirement to test associated components during shutdown conditions will minimize overall plant risk by allowing credit for components that tested at power when the testing is consistent with safe operation of the plant.

Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. *Does the change involve a significant reduction in a margin of safety?*

The proposed amendment does not involve revisions to any safety limits or safety system setting that would adversely impact plant safety. The proposed amendment does not affect the ability of systems, structures or components important to the mitigation and control of design basis accident conditions within the facility to perform their safety related functions. In addition, the proposed amendment does not affect the ability of the safety systems to ensure that the facility can be maintained in a shutdown or refueling condition for extended periods of time.

The proposed amendment does not change the current surveillance type and frequency of the affected 18 month surveillance requirements for the ECCS, Containment Depressurization and Cooling System, Chemical Addition System, and Containment Isolation Valves. The proposed amendment removes only the requirement to perform this testing during shutdown conditions. Allowing this testing to be performed either during shutdown or at power when plant conditions do not adversely affect plant safety maintains the safety analysis conclusions and allows shutdown activities to be planned which will reduce the shutdown risk.

The proposed administrative, editorial, and format changes have no impact on plant safety.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The

Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 12, 2000 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mary O'Reilly, FirstEnergy Nuclear Operating Company, First Energy Corporation, 76 South Main Street, Akron, OH 44308, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 1, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 6th day of September 2000.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation

[FR Doc. 00–23358 Filed 9–11–00; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation; Crystal River Unit 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–72 issued to Florida Power Corporation (FPC or the licensee), for operation of Crystal River Unit 3 (CR–3) located in Citrus County, Florida.

Environmental Assessment

Identification of the Proposed Action

The proposed action would increase the number of fuel assemblies that can be stored in the CR–3 spent fuel pools (SFPs) from 1357 fuel assemblies to 1474 fuel assemblies, an increase of approximately 8 percent, and change the configuration of fresh fuel storage in spent fuel pool A. In addition, the new spent fuel storage racks will use Boral as the neutron absorber material, replacing the present neutron absorber material, Boraflex, which is continuing to degrade.

The proposed action is in accordance with the licensee's application for amendment dated September 16, 1999, as supplemented by letters dated May 3 and June 29, 2000.

The Need for the Proposed Action

The currently available storage capacity for spent fuel at CR–3, allowing for the required reserve capacity to accommodate a full core offload, is projected to be exceeded in the year 2013. The CR–3 operating license has an expiration date of December 3, 2016. Thus, the additional 117 locations for storage of fuel assemblies are necessary to provide adequate spent fuel storage capacity for the remainder of the CR–3 operating license. In addition, the existing racks utilize Boraflex as the neutron absorber material. The new spent fuel storage racks utilize Boral as the neutron absorber material, which will minimize the water clarity problems associated with use of Boraflex.

Environmental Impacts of the Proposed Action

Radioactive Waste Treatment

CR–3 uses waste treatment systems designed to collect and process gaseous, liquid, and solid waste that might contain radioactive material. These radioactive waste treatment systems were evaluated in the Final Environmental Statement (FES) dated May 1973. The proposed changes to the SFP will not involve any change in the waste treatment systems described in the FES.

Gaseous Radioactive Wastes

The storage of additional spent fuel assemblies in the pool is not expected to affect the releases of radioactive gases from the spent fuel pool. Gaseous fission products such as Krypton-85 and Iodine-131 are produced by the fuel in the core during reactor operation. A small percentage of these fission gases can be released to the reactor coolant from the small number of fuel assemblies that are expected to develop leaks during reactor operation. During refueling operations, some of these fission products would then enter the pools and be subsequently released into the air. At CR–3, there has been no measured Krypton-85 release from the fuel building ventilation system for the 2 years preceding the September 16, 1999, submittal. Since the frequency of refueling (and, therefore, the number of freshly offloaded spent fuel assemblies stored in the pools at any one time) will not increase, there will be no increase in the amounts of these types of fission products released to the atmosphere as a result of the increased pool fuel storage capacity.

The increased heat load on the pool from the storage of additional spent fuel assemblies was determined by the licensee to be insignificant, and therefore there would be no significant increase in the pools' evaporation rate. Therefore, no increase in the amount of gaseous tritium released from the pool is expected. The overall release of radioactive gases from CR–3 will remain a small fraction of the limits of 10 CFR 20.1301.

Solid Radioactive Wastes

Spent resins are generated by the processing of SFP water through the pools' purification system. These spent resins are disposed of as solid radioactive waste. Resin replacement is determined primarily by the requirement for water clarity and is normally done approximately once per year. No significant increase in the volume of solid radioactive waste is expected with the expanded storage capacity. During reracking operations, small amounts of additional waste resin may be generated by the pools' cleanup systems on a one-time basis. Additional solid radwaste will consist of the old spent fuel rack modules themselves, as well as any interferences of pool hardware that may have to be removed from the pool to permit installation of the new rack modules. The old racks will be washed down in preparation for packaging and shipment. Shipping containers and procedures will conform to Federal regulations as specified in 10 CFR Part 71, ''Packaging and Transportation of Radioactive Material,'' and to the requirements of any state through which the shipment may pass, as set forth by the state's department of transportation.

Liquid Radioactive Wastes

The release of radioactive liquids will not be affected directly as a result of the SFP modifications. The SFP ion exchanger resins remove soluble radioactive materials from the pool water. When the resins are replaced, the small amount of resin sluice water that is released is processed by the radwaste systems. As previously stated, the frequency of resin replacement may increase slightly during the installation of the new racks. However, the increase in the amount of radioactive liquid released to the environment as a result of the proposed SFP expansion is expected to be negligible.

Occupational Dose Consideration

Radiation protection personnel at CR–3 will monitor the doses to the workers during the SFP expansion operations. The total occupational dose to plant workers as a result of the SFP reracking operations is estimated to be approximately 3 person-rem, which includes estimates of person-rem exposures associated with washdown and preparation of the existing racks for shipping. No diving operations are planned for the actual rack replacement operation. The dose estimate is comparable to doses for similar SFP modifications performed at other nuclear plants. The SFP rack installations will follow detailed procedures prepared with full consideration of as low as reasonably achievable (ALARA) principles.

On the basis of its review of the licensee's proposal, the NRC staff concludes that the CR–3 SFP reracking operations can be performed in a manner that will ensure that doses to workers will be maintained ALARA. The estimated dose of 3 person-rem to perform the proposed SFP reracking operations is a small fraction of the annual collective dose accrued at CR–3.

Accident Considerations

A fuel handling accident outside the reactor building at CR–3 is postulated as the dropping of a fuel assembly into the SFP, resulting in damage to all 208 fuel pins in the dropped fuel assembly. The

radiological consequences of this accident are based solely on the damage to the dropped assembly. The replacement racks only increase the storage capacity of the SFP and do not change the frequency or method for handling fuel assemblies. The revised fuel storage configuration does not affect the construction or fuel enrichment of individual fuel assemblies. Therefore, the probability or consequences of a fuel handling accident is not increased.

The licensee evaluated spent fuel drop accidents onto the spent fuel racks, assuming three different orientations, and the dropping of a rack onto the spent fuel pool floor. The three orientations for the fuel assembly drops were; (1) Drop of a fuel assembly onto the top of a rack with the assembly in a vertical position, (2) drop of a fuel assembly onto the top of a rack with the assembly in an inclined position, and (3) drop of a fuel assembly through an empty rack cell to the bottom of the rack. In each case, the rack structure retained the functional capability to maintain the fuel in a non-critical state. For orientation 3, the drop to the bottom of the empty rack cell did not result in penetration of the pool liner.

An analysis was performed to determine the consequences of a rack drop into SFP B (racks will not be moved over SFP A). The heaviest load to be lifted as part of the rack replacement project is a rack currently in SFP B with a weight of 17,715 pounds. The combined weight of this rack and the lifting rig is less than 20,000 pounds. The load drop analysis was performed using a bounding load of 20,000 pounds, assumed to be dropped from the highest lift point of 6 inches above the spent fuel pool operating deck to the pool floor.

The results of dropping a rack directly onto the SFP floor were the puncturing of the SFP liner and penetrating the 5-foot thick concrete floor slab below the liner to a depth of less than 6 inches. The seams between all sections of concrete are sealed and a waterproof sealant applied to the inside surfaces of the concrete. The floor and walls of the CR–3 SFP have a system of leak chases at the welded joints of the stainless steel liner panels. The leak chase trenches collect liner leakage and drain by gravity to a leak test hopper/funnel. Isolation valves are provided in each drain line from the leak chase trenches to the hopper. These valves will be maintained closed during rack movements, thereby precluding excessive leakage that might occur following a load drop. The only non-isolable leakage from the SFP would be a slow migration of the water from the site of the puncture. The rate of this leakage would be limited by the low permeability of the concrete to a negligible value.

CR–3 has various sources of make-up to the SFP. The sources are the Decay Heat System, the Demineralized Water Supply System, and temporary fire hoses. Based on the isolation valves being maintained closed, the negligible leakage rate through the concrete, and the various sources of make-up, the make-up capability exceeds any leakage resulting from a rack drop. Uncovery of the fuel stored in the SFP B is precluded, and, therefore, there is no increase in consequences as a result of a rack drop onto the SFP floor.

The change in fresh fuel storage configuration in SFP A will result in the effective neutron multiplication factor remaining well below 0.95. Therefore, there is no reduction in the margin to criticality as a result of the change in fresh fuel storage configuration in SFP A, and no increase in the probability of an inadvertent criticality.

The Commission has completed its evaluation of the proposed action and concludes that the proposed action will not increase the probability or consequences of accidents, no changes are being made in the amount or types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historical sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Shipping Fuel to a Permanent Federal Fuel Storage/Disposal Facility

Shipment of spent fuel to a high-level radioactive storage facility is an alternative to increasing the onsite spent fuel storage capacity. However, the U.S. Department of Energy's (DOE's) high-level radioactive waste repository is not expected to begin receiving spent fuel until approximately 2010, at the earliest. To date, no location has been identified and an interim federal storage facility has yet to be identified in advance of a decision on a permanent repository. Therefore, shipping the spent fuel to the DOE repository is not considered an alternative to increased onsite fuel storage capacity at this time.

Shipping Fuel to a Reprocessing Facility

Reprocessing of spent fuel from CR–3 is not a viable alternative since there are no operating commercial reprocessing facilities in the United States. Therefore, spent fuel would have to be shipped to an overseas facility for reprocessing. However, this approach has never been used and it would require approval by the Department of State as well as other entities. Therefore, shipping fuel to a reprocessing facility is not a viable option.

Reduction of Spent Fuel Generation

Operation at a reduced power level would decrease the amount of fuel being stored in the pool and thus increase the amount of time before full core off-load capacity is lost. However, operating the plant at a reduced power level would not make effective use of available resources, and the generation of replacement power would also result in environmental impacts. Therefore, reducing the amount of spent fuel generated by reducing power would not result in a significant improvement in environmental impacts and is not considered a practical alternative.

Transshipment of the Fuel Offsite to Another FPC Site

CR–3 is the only nuclear unit of FPC. Therefore, transshipment of spent fuel to another facility with FPC is not an available option.

Decommissioning

Power generation from CR–3 is essential to meet the current growth rate for energy demand in the State of Florida. Additional replacement capacity would be required if CR–3 were to be retired early. Permanent shutdown of CR–3 would result in loss of valuable power resources. The environmental impact would be similar to that for operation at a reduced power level.

Alternatives Creating Additional Storage Capacity

Dry cask storage is a method of transferring spent fuel, after storage in the pool for several years, to high-capacity casks with passive heat dissipation features. Storage of fuel in a private Independent Spent Fuel Storage Installation (ISFSI) located away from the CR–3 site is not available, since such a facility has not been constructed by FPC or licensed by the NRC. An on-site

ISFSI is a long-term solution for CR–3, but cost and schedule considerations do not allow this alternative to meet current needs at CR–3 for near term spent fuel storage needs.

The alternative technology of constructing an ISFSI that could create additional storage capacity involves additional fuel handling with an attendant opportunity for a fuel handling accident, involves higher cumulative dose to workers affecting the fuel transfers, and would not result in a significant improvement in environmental impacts compared to the proposed reracking modifications.

The No-Action Alternative

The NRC staff also considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the application would result in no significant change in current environmental impacts. The environmental impacts of the proposed action and the alternative actions are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the FES for CR–3.

Agencies and Persons Contacted

In accordance with its stated policy, on August 7, 2000, the NRC staff consulted with William Passetti, Chief, Department of Health, Bureau of Radiation Control, for the State Florida, regarding the environmental impact of the proposed action. The state official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 16, 1999, as supplemented by letters dated May 3 and June 29, 2000, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library Component on the NRC Web site, http://www.nrc.gov.

Dated at Rockville, Maryland, this 5th day of September 2000.

Richard P. Correia,

Chief, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–23357 Filed 9–11–00; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

Amergen Energy Company, LLC; Oyster Creek Nuclear Generating Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–16, issued to AmerGen Energy Company, LLC, (the licensee), for operation of the Oyster Creek Nuclear Generating Station (Oyster Creek), located in Lacey Township, Ocean County, New Jersey.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the Technical Specifications (TSs) to reflect the installation of additional spent fuel pool (SFP) storage racks. The additional new racks would provide 390 additional spent fuel assembly storage locations.

The proposed action is in accordance with the licensee's application for amendment dated June 18, 1999, as supplemented on June 22 and December 10, 1999, and February 10, and May 2, 2000. On the date of the application, GPU Nuclear, Inc. (GPUN) was the licensed operator for Oyster Creek. On August 8, 2000, GPUN's ownership interest in Oyster Creek was transferred to AmerGen Energy Company, LLC (AmerGen). By letter dated August 10, 2000, AmerGen requested that the Nuclear Regulatory Commission continue to review and act upon all requests before the Commission, which had been submitted by GPUN.

The Need for the Proposed Action

The proposed action is needed to provide for storage of spent fuel. The underlying purpose of the expansion is to provide interim additional storage capacity for spent fuel to allow for continued operation of the plant until additional methods of storing spent fuel have been established.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that there are no significant environmental impacts associated with the proposed action. The factors considered in this determination are discussed below.

Radioactive Wastes

Oyster Creek uses waste treatment systems designed to collect and process gaseous, liquid, and solid waste that might contain radioactive material. These radioactive waste treatment systems were evaluated in the Final Environmental Statement (FES) dated December 1974. The proposed SFP expansion will not involve any change in the waste treatment systems described in the FES.

Radioactive Material Released to the Atmosphere

The storage of additional spent fuel assemblies in the SFP is not expected to affect the releases of radioactive gases from the SFP. Gaseous fission products such as Krypton-85 and Iodine-131 are produced by the fuel in the core during reactor operation. A small percentage of these fission gases are released to the reactor coolant from the small number of fuel assemblies which are expected to develop leaks during reactor operation. During refueling operations, some of these fission products enter the SFP and are subsequently released into the air. Since the frequency of refuelings (and therefore the number of freshly off loaded spent fuel assemblies stored in the SFP at any one time) will not increase, there will be no increase in the amounts of these types of fission products released to the atmosphere as a result of the increased SFP fuel storage capacity.

The increased heat load on the SFP from the storage of additional spent fuel assemblies could potentially result in an increase in the SFP evaporation rate. However, this increased evaporation rate is not expected to result in an increase in the amount of gaseous tritium released from the pool. The overall release of radioactive gases from Oyster Creek will remain a small fraction of the limits of 10 CFR 20.1301.

Criticality analyses were performed with several assumptions which tend to maximize the rack reactivity. For example, it was assumed that the racks contain the most reactive fuel authorized to be stored at Oyster Creek without any control rods or any uncontained burnable absorber and with the fuel at the burnup corresponding to the highest planar reactivity during its burnup history. The criticality aspects of the proposed expansion of the spent fuel storage racks are acceptable and meet the requirements of General Design

Criterion 62 for the prevention of criticality in fuel storage and handling. Therefore, there is no significant increase in the probability or consequences of accidents which could include the release of radioactive material.

Solid Radioactive Wastes

Spent resins are generated by the processing of SFP water through the SFP purification system at Oyster Creek. These spent resins are disposed of as solid radioactive waste. The water turbulence caused by the SFP reracking may result in some minor amounts of resuspension of particulate matter in the SFP. This could result in a small, temporary increase in the resin change-up frequency of the SFP purification system during the SFP reracking operation. The licensee will use, as necessary, an underwater vacuum to clean the floor of the SFP. Vacuuming of the SFP floor will remove any extraneous debris and crud and ensure visual clarity in the SFP (to facilitate above-pool and diving operations, if necessary). Additional solid radwaste will consist of any interferences that may have to be removed from the SFP to permit installation of the new SFP rack modules. Other than the radwaste generated during the actual new rack installation operation, the staff does not expect that the additional fuel storage made possible by the increased SFP storage capacity will result in a significant change in the generation of solid radwaste at the facility.

Liquid Radioactive Wastes

The release of radioactive liquids will not be affected directly as a result of the SFP modifications. The SFP ion exchanger resins remove soluble and particulate radioactive materials from the SFP water. When the resins are changed out, the small amount of resin sluice water which is released is processed by the radwaste system. As stated above, the frequency of resin change-up may increase only slightly during the installation of the new racks. However, the amount of liquid radioactive material released to the environment as a result of the proposed SFP expansion is expected to be negligible.

Radiological Impact Assessment

Radiation Protection personnel will monitor the doses to the workers during the SFP expansion operation, and all work will be in accordance with radiation work permits. If divers are used for the SFP racking operation, the licensee will provide procedures which will specify required survey, personal dosimetry, and other work controls consistent with the intent of Regulatory Guide 8.38, Appendix A guidance. The total occupational dose to plant workers as a result of the SFP expansion operation is estimated to be between 1 and 2 person-rem. This dose estimate is reasonable, given the limited work scope proposed, and is consistent with comparable doses for similar SFP modifications/operations performed at other plants. The upcoming SFP rack installation will follow detailed procedures prepared with full consideration of as low as is reasonably achievable (ALARA) principles.

On the basis of our review of the licensee's proposal, the staff concludes that the Oyster Creek Station SFP rack installation operation can be performed in a manner that will ensure that doses to workers will be maintained ALARA. The estimated collective dose to perform the proposed SFP racking operation is a small fraction of the annual collective dose accrued at the facility.

Accident Considerations

In its application, the licensee evaluated the possible consequences of a fuel handling accident to determine the thyroid and whole-body doses at the Exclusion Area Boundary, Low Population Zone, and Control Room. The proposed SFP rack installation at Oyster Creek will not affect any of the assumptions or inputs used in evaluating the dose consequences of a fuel handling accident and therefore will not result in an increase in the doses from a postulated fuel handling accident.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Spent fuel pool expansion was found by the licensee to be the preferred option. An overview of the alternative technologies considered by the licensee is provided below.

Rod Consolidation

Rod consolidation has been shown to be a feasible technology. Rod consolidation involves disassembly of spent fuel, followed by the storage of the fuel rods from two assemblies into the volume of one and the disposal of the fuel assembly skeleton outside of the pool (this is considered a 2:1 compaction ratio). The rods are stored in a stainless steel can that has the outer dimensions of a fuel assembly. The can is stored in the spent fuel racks. The top of the can has an end fixture that matches up with the spent fuel handling tool. This permits moving the cans in an easy fashion.

Rod consolidation pilot projects in the past have consisted of underwater tooling that is manipulated by an overhead crane and operated by a maintenance worker. This is a very slow and repetitive process.

The industry experience with rod consolidation has been mixed thus far. The principal advantages of this technology are the ability to modularize, compatibility with Department of Energy (DOE) waste management system, moderate cost, no need of additional land, and no additional required surveillance. The disadvantages are the release of fission gases from rod breakage, the potential for increased fuel cladding corrosion from scraping of the protective oxide layer, the potential interference of the (prolonged) consolidation activity with ongoing plant operation, the increased dead weight and floor loading, and the lack of sufficient industry experience.

On-Site Cask Storage

Dry cask storage is a method of storing spent nuclear fuel in a high capacity container. The cask provides radiation shielding and passive heat dissipation. Typical capacities for boiling-water reactor fuel range from 44 to 68 assemblies that have been removed from the reactor for at least 5 years. The casks, once loaded, are then stored outdoors on a seismically qualified concrete pad. The pad will have to be located away from the secured boundary of the site because of site limitations. The storage location will be required to have a high level of security that includes frequent tours, reliable lighting, intruder detection, and continuous visual monitoring.

The casks, as presently licensed, are limited to 20-year storage service life. Once the 20 years has expired the cask manufacturer or the utility must recertify the cask or the utility must remove the spent fuel from the container. In the interim, the U.S. DOE has embraced the concept of multi-purpose canister (MPC), obsolescing all existing licensed cask designs. Work is also continuing by several companies to provide an MPC system that will be capable of long-term storage, transport, and final disposal in a repository. For example, the plant must provide for a decontamination facility where the outgoing cask can be decontaminated for release. There are several plant modifications required to support cask use. Tap-ins must be made to the gaseous waste system and chilled water to support vacuum drying of the spent fuel and piping must be installed to return cask water back to the spent fuel pool/cask pit. A seismic concrete pad must be made to store the loaded casks. This pad must have a security fence, surveillance protection, emergency power, and video surveillance. Finally, facilities must be provided to vacuum dry the cask, back fill it with helium, perform leak checks, remachine the gasket surfaces if leaks persist, and assemble the cask on-site. Presently, no MPC cask had been licensed. Because of the continued uncertainty in the government's policy, the licensee stated that the capital investment to use a dry storage system is considered to be an inferior alternative for Oyster Creek at this time.

Modular Vault Dry Storage

Vault storage consists of storing spent fuel in shielded stainless steel cylinders in a horizontal configuration in a reinforced concrete vault. The concrete vault provides radiation shielding and missile protection. It must be designed to withstand the postulated seismic loadings for the site.

A transfer cask is needed to deliver the storage canisters from the fuel pool. The plant must provide for a decontamination bay to decontaminate the transfer cask and connection to its gaseous waste system and chilled water systems. A collection and delivery system must be installed to return the pool water entrained in the canisters back to the fuel pool. Provisions for canister drying, helium injection, handling and automatic welding are also necessary.

The storage area must be designed to have a high level of security. Due to the required space, the vault secured area must be located outside the secured perimeter. Consideration of safety and security requires it to have its own video surveillance system, intrusion detection, and an autonomous power source.

Some other concerns relating to the vault storage system are the inevitable ''repackaging'' for shipment to the DOE repository, the responsibility to eventually decommission the new facility, the large ''footprint'' (land consumption), the potential fuel handling accidents, the potential fuel/clad rupture due to high temperatures, and the high cost.

At the present time, no MPC technology based vault system has been licensed for fuel transport. The high cost and uncertainty make this option less prudent.

Horizontal Silo Storage

A variation of the horizontal vault storage technology is more aptly referred to as ''horizontal silo'' storage. This technology suffers from the same drawbacks that other dry cask technologies have, namely:

a. No fuel with cladding defects can be placed in the silo.

b. Concern regarding long-term integrity of the fuel at elevated temperatures.

c. Potential for eventual repackaging at the site.

d. Potential for fuel handling accidents.

e. Relatively high cumulative dose to personnel in effecting fuel transfer (compared to reracking).

f. Compatibility of reactor/fuel building handling crane with fuel transfer hardware.

g. Potential incompatibility with DOE shipment for eventual off-site shipment.

h. Potential for sabotage.

New Fuel Pool

Constructing and licensing a new fuel pool is not a practical alternative for Oyster Creek because such an effort may take up to 10 years. Moreover, the cost of this option is prohibitively high.

As a result, the licensee concluded that none of the alternative technologies that could create additional spent fuel storage capacity at Oyster Creek could do so with less environmental impact than the impacts associated with the preferred alternative.

Shipment of Fuel to a Permanent Federal Fuel Storage/Disposal Facility

Shipment of spent fuel to a high-level radioactive storage facility is an alternative to increasing the onsite spent fuel storage capacity. However, the U.S. Department of Energy's (DOE's) high-level radioactive waste repository is not expected to begin receiving spent fuel until approximately 2010, at the earliest. In October 1996, the Administration did commit DOE to begin storing wastes at a centralized location by January 31, 1998. However, no location has been identified and an interim federal storage facility has yet to be identified in advance of a decision on a permanent repository. Therefore, shipping spent fuel to the DOE repository is not considered an alternative to increased onsite spent fuel storage capacity at this time.

Shipment of Fuel to a Reprocessing Facility

Reprocessing of spent fuel from Oyster Creek is not a viable alternative since there are no operating commercial reprocessing facilities in the United States. Therefore, spent fuel would have to be shipped to an overseas facility for reprocessing. However, this approach has never been used and it would require approval by the Department of State as well as other entities. The shipment of spent fuel to a reprocessing facility is not an acceptable alternative because of increased fuel handling risks and additional occupational exposure.

Shipment of Fuel to Another Utility or Site for Storage

The shipment of fuel to another utility for storage would provide short-term relief from the storage problem at Oyster Creek. The Nuclear Waste Policy Act and 10 CFR Part 53, however, clearly place the responsibility for the interim storage of spent fuel with each owner or operator of a nuclear plant. The shipment of fuel to another source is not an acceptable alternative because of increased fuel handling risks and additional occupational radiation exposure, as well as the fact that no additional storage capacity would be created.

Reduction of Spent Fuel Generation

Operation at a reduced power level would decrease the amount of fuel being stored in the pool and thus increase the amount of time before full core off-load capacity is lost. However, operating the plant at a reduced power level would not make effective use of available resources. Therefore, reducing the amount of spent fuel generated by reducing power is not considered a practical alternative.

The No-Action Alternative

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative).

Denial of the application would result in no change in current environmental

impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Oyster Creek.

Agencies and Persons Consulted

In accordance with its stated policy, on July 17, 2000, the NRC staff consulted with the New Jersey State official, Mr. Richard Pinney, of the State of New Jersey Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 18, 1999, as supplemented on June 22 and December 10, 1999, and February 10, and May 2, 2000, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http:\\www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 5th day of September, 2000.

For the Nuclear Regulatory Commission.

Helen N. Pastis,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–23359 Filed 9–11–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–1100 (which should be mentioned in all correspondence concerning this draft guide), is titled ''Design Guidance for Radioactive Waste Management Systems, Structures, and Components Installed in Light-Water-Cooled Nuclear Power Plants.'' This guide is being developed to propose guidance on methods acceptable to the NRC staff for complying with the NRC's regulations on the design, construction, installation, and testing of radioactive waste management facilities, and the structures, systems, and components in light-water-reactor nuclear power plants.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by November 20, 2000.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV*. For information about the draft guide and the related documents, contact Mr. H. Graves at (301) 415–5880; e-mail HLG1@NRC.GOV.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by fax to (301) 415–2289, or by e-mail to <DISTRIBUTION@NRC.GOV>. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 31st day of August 2000.

For the Nuclear Regulatory Commission.

Michael E. Mayfield,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 00–23247 Filed 9–11–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–1098 (which should be mentioned in all correspondence concerning this draft guide), is titled ''Safety-Related Concrete Structures for Nuclear Power Plants (Other than Reactor Vessels and Containments.)'' This guide is being revised to propose guidance on methods acceptable to the NRC staff for complying with the NRC's regulations on the design, evaluation, and quality assurance of safety-related nuclear concrete structures, excluding concrete reactor vessels and concrete containments.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be

most helpful if received by November 20, 2000.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV.* For information about the draft guide and the related documents, contact Mr. H. Graves at (301) 415–5880; e-mail HLG1@NRC.GOV.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by fax to (301) 415–2289, or by e-mail to <DISTRIBUTION@NRC.GOV>. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 1st day of September 2000.

For the Nuclear Regulatory Commission.

Michael E. Mayfield,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 00–23248 Filed 9–11–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of submission for OMB review, Comment request.

SUMMARY: The Office of Management and Budget (OMB) has submitted an information collection to the Office of Information and Regulatory Affairs (OIRA) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The form (SF–LLL) is required by 31 U.S.C. 1352. No comments were received in response to OMB's earlier **Federal Register** notice (June 19, 2000, 65 FR 38005). OMB is not proposing any changes to the SF–LLL.

DATES: Submit comments on or before October 12, 2000.

ADDRESSES: Comments should be addressed to: Ed Springer, Desk Officer, OIRA, OMB, 725 17th Street NW, Room 10236, New Executive Office Building, Washington, DC 20503. Comments may be submitted via E-mail (espringer@omb.eop.gov), but must be made in the text of the message and not as an attachment.

FOR FURTHER INFORMATION CONTACT: F. James Charney, Office of Federal Financial Management, OMB, (202) 395–3993. The SF–LLL can be downloaded from OMB's home page (http://www.whitehouse.gov/omb), under the heading ''Grants Management.''

SUPPLEMENTARY INFORMATION:

OMB Control No.: 0348–0046.

Title: Disclosure of Lobbying Activities.

Form No: SF–LLL.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Respondents: States, Local Governments, Non-Profit organizations.

Number of Responses: 300.

Estimated Time Per Response: 10 minutes.

Needs and Uses: The SF–LLL is the standard disclosure reporting form for lobbying paid for with non-Federal funds, as required by the Byrd Amendment, as amended by the Lobbying Disclosure Act of 1995.

Issued in Washington, DC.

Joshua Gotbaum,

Controller.

[FR Doc. 00–23279 Filed 9–11–00; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF PERSONNEL MANAGEMENT

Reinstatement, Without Change of a Previously Approved Collection For Which Approval Has Expired; IS–10

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13) and 5 CFR 1320.5(a)(I)(iv) this notice announces that OPM intends to submit to the Office of Management and Budget (OMB) a request for clearance of a revised information collection. The Mail Reinterview Form, IS–10, a two sided form, is completed by individuals who have been interviewed by a contract Investigator during the course of a personnel investigation. The front of the form is a letter requesting the sender to respond to the questions on the back of the form. Used as a quality assurance instrument, the questions on the back of the form ask questions regarding the performance of the investigator.

The letter and questionnaire portions have been reworded to comply with ''plain language'' precepts. We have eliminated obsolete and extraneous language in the letter. The reinterview questions on the back of the form have been revised and reduced to make it clearer. The form number has been revised to comply with the Investigations Service reorganization.

We estimate that 600 individuals will respond annually, each response requiring approximately 6 minutes to complete, for a total burden of 60 hours. This submission represents a change in number of respondents.

For copies of this proposal contact Mary Beth Smith-Toomey at (202) 606–8358 or fax (202) 418–3251 or by e-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before November 13, 2000.

ADDRESSES: Send or deliver written comments to: Richard A. Ferris, Associate Director, Investigations Service, U.S. Office of Personnel Management, Room 5416, 1900 E. Street NW. Washington, DC 20415–4000.

FOR FURTHER INFORMATION CONTACT: Rasheedah I. Ahmad, Program Analyst, (202) 606–7983 or FAX (202) 606–2390.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–23277 Filed 9–11–00; 8:45 am]

BILLING CODE 6325–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the

collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Statement of Claimant or Other Person.

(2) *Form(s) submitted:* G–93.

(3) *OMB Number:* 3220–0183.

(4) *Expiration date of current OMB clearance:* 11/30/2000.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households, Business or other for-profit.

(7) *Estimated annual number of respondents:* 900.

(8) *Total annual responses:* 900.

(9) *Total annual reporting hours:* 225.

(10) *Collection description:* Under Section 2 of the Railroad Retirement Act and the Railroad Unemployment Insurance Act, pertinent information and proofs must be submitted by an applicant so that the Railroad Retirement Board can determine his or her entitlement to benefits. The collection obtains information supplementing or changing the information previously provided by an applicant.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Joe Lackey (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 00–23367 Filed 9–11–00; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in Section 3221(a) of the Railroad Retirement Tax Act (26 U.S.C., Section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning October 1, 2000, shall be at the rate of 26½ cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning October 1, 2000, 38.3 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 61.7 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

By Authority of the Board.

Dated: August 30, 2000.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 00–23366 Filed 9–11–00; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24633: 812–12236]

Propel, Inc.; Notice of Application

September 6, 2000.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF THE APPLICATION: The order would permit applicant and its controlled companies to engage in certain foreign telecommunications ventures without being subject to the provisions of the Act.

FILING DATES: The application was filed on August 30, 2000.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 2, 2000, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons 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. Applicant, c/o Thomas P. Holden, Motorola, Inc. 425 North Martingale Road, Schaumburg, IL 60173.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 942–0582, 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 SEC's Public Reference Branch, 450 5th Street, N.W., Washington, D.C. 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. Propel, Inc. (''Propel'') a Delaware corporation, was formed in 1999 to succeed to a portion of the business conducted by the Network Management Group (''NMG'') of Motorola, Inc. (''Motorola''), a Delaware corporation. The assets used in connection with NMG's business are currently owned by Motorola or by one of the following subsidiaries of Motorola: Motorola International Development Corporation and Motorola International Network Ventures, Inc. (the ''Holding Companies''). These assets consist predominantly of voting security positions in various foreign cellular telephone network operating companies (''Operating Companies''). Upon Propel succeeding to NMG's business,[1] Propel will effect a public offering of its equity securities and/or its equity securities will be distributed by Motorola to its security holders in a spin-off transaction. Immediately prior to such offering or distribution, the Holding Companies will be merged into Motorola and the majority of the NMG assets contributed to Propel. This transaction is expected to occur in the third or fourth quarter of 2000.

2. NMG is actively engaged in the operations of the Operating Companies. The personnel of NMG serve as directors and officers of, and in some cases hold management-level employee positions with, the Operating Companies. NMG's directors, officers and employees are experienced

[1] Certain NMG assets, including a domestic holding, will not be contributed to Propel due to various tax, legal, and business considerations. Propel will hold an interest in a domestic entity that operates an international Internet protocol based communications platform. In the future, Propel may hold interests in other domestic entities that are involved in the telecommunications business in the United States. The requested order will not address Propel's activities in the United States.

operating, financial, engineering, legal and/or business development personnel. Through negotiated contractual and other arrangements with the Operating Companies and their other owners, NMG possesses and exercises significant control over key operational and economic aspects of the Operating Companies.

3. Propel requests relief to permit it and each entity that is now or in the future controlled by, or under common control with, Propel (each, including Propel, a ''Covered Entity'') to engage, either directly or indirectly through subsidiaries, in certain foreign telecommunications ventures without being subject to the provisions of the Act. For purposes of the application, Propel represents that ''foreign telecommunications venture'' means any and all activities outside the United States involving: communications; media; the creation, storage and transmission of analog or digital voice, video or data; programming, including entertainment, news, information and home shopping services; broadband and satellite distribution; over the air broadcast; telecommunications; wireless and wireline distribution and telephony; network construction; design, operation and ownership of related transport construction; wireless handsets and accessories; and any and all related or similar activities, services and assets.

4. Applicant would participate in foreign telecommunications ventures in either of two ways. In one, applicant, directly or through one or more other Covered Entities, would invest in a foreign telecommunications company. ''Foreign telecommunications company,'' as used in the application, means any corporation, partnership, joint venture, association, joint stock company, limited liability company, or other form of organization (a) substantially all of whose operations are conducted outside of the United States, (b) that owns the assets of a foreign telecommunications venture (which may consist of capital assets or stock of operating subsidiaries), and (c) whose business primarily relates to, or whose operations consist primarily of, the ownership, development and operation of, or the provisions of management or operational services relating to, foreign telecommunications ventures. Propel or one or more other Covered Entities would acquire a substantial interest in the foreign telecommunications company, and provide active developmental assistance to the foreign telecommunications venture. For purposes of the application, applicant represents that ''substantial interest'' means any ownership interest that represents at least a 10% economic or voting interest. In addition, applicant represents that ''active developmental assistance'' means material involvement in the creation (including but not limited to license acquisition), development or operation of, the provision of material managerial, advisory, technical, or operational services relating to, or significant input on material decisions affecting the development or operations of, a foreign telecommunications venture.

5. The second way applicant would participate in foreign telecommunications ventures is to invest, either directly or through one or more other Covered Entities, in a telecommunications partnership. Applicant represents that, for purposes of the application, a ''telecommunications partnership'' means any partnership, joint venture, limited liability company or other unincorporated association (a) substantially all of whose operations are conducted outside of the United States, and (b) whose purpose is to acquire interest in, and to develop, operate, or provide management services to, one or more foreign telecommunications companies. Representatives of Propel or another Covered Entity would satisfy the active development assistance requirement generally by participation on the management committee or similar governing body of the telecommunication partnership. Propel or one or more other Covered Entities would acquire a substantial interest in the telecommunications partnership. That telecommunications partnership would, in turn directly or through one or more subsidiaries, acquire a substantial interest in one or more foreign telecommunications companies and provide active developmental assistance to the foreign telecommunications ventures of the telecommunications partnership.

6. Propel represents that providing ''active developmental assistance'' requires Propel or another Covered Entity to be or have been materially involved in providing such assistance. Thus, Propel or another Covered Entity may rely on the exemptive order even though it no longer provides active developmental assistance so long as it continues to have a substantial interest in the foreign telecommunications venture, which is past the developmental stage, and a Covered Entity or NMG provided active developmental assistance during the venture's developmental stage. Similarly, if a Covered Entity acquires (or NMG while the predecessor to Propel acquired) a substantial interest in a foreign telecommunications venture after the development stage and a Covered Entity provides (or NMG provided) active developmental assistance to the foreign telecommunications venture, then a Covered Entity may continue to rely on the exemptive order, even through active developmental assistance ceases, so long as a Covered Entity continues to have a substantial interest in the venture, and (a) the business of the foreign telecommunications venture was significantly enhanced by the active developmental assistance of a Covered Entity or NMG or (b) the foreign telecommunications venture (i) is merged or combined with, or acquired by, a company in the same or a related business, or (ii) effects an initial public offering of voting stock.

7. Propel represents that NMG has provided. and Propel or another Covered Entity will provide, active developmental assistance to each foreign telecommunications company or telecommunications partnership in which a Covered Entity takes a substantial interest by either developing, conducting or expanding the company's or partnership's operations.[2] This assistance includes one or more of the following areas: license acquisition (through bid preparation or otherwise); network/system design and engineering; employee hiring and training; operations including marketing, sales, billing, collections, customer care, and computerization; and purchasing.

8. In preparation of the bid for a license, NMG performs comprehensive market demand analysis in the potential country market and evaluates future wireless telephony demand. NMG next translates this information into a business plan, developed in conjunction with a proprietary business model of NMG. This model generates information that helps determine whether a bid should be made and the amount of the bid. In preparation of the bid, NMG also relies on its previous bid experiences in other foreign markets.

9. Networks/system design and engineering services begin before a bid is submitted for a license and continue until completion of network build out. In the pre-bid phase, NMG provides engineering and design expertise in planning and constructing the cellular system. NMG provides marketing research, market analysis, system design

[2] To date, NMG has not held an interest in a telecommunications partnership but Propel may do so in the future.

and technology choice consulting during the bid process.

10. NMG provides assistance with recruiting and training qualified senior executives and other personnel to operate a foreign telecommunications venture during the early stages of the development of some ventures. NMG provides employee training to localize expertise in all areas of operations. NMG personnel help select management employees and train them in various areas, including systems operations, financial and billing, customer care, marketing and sales, and general back-office support. In many instances, NMG employees were seconded to the foreign telecommunications company in the initial stages of setting up the operations and participated in the selection and training of their replacements. In some instances NMG provides senior management on a longer-term basis.

11. Assistance may also be provided in deploying, servicing, trouble shooting and operating the networks of foreign telecommunications ventures. When these ventures win licenses, NMG assists in the design, installation and optimization of the cellular systems, as well as providing consultation and support services in implementing the system. NMG assists in the design and installation of financial control procedures and accounting systems and in training people to use the systems. NMG provides back-up support for billing procedures and billing software selection, as well as marketing and sales assistance. NMG also helps its ventures with purchasing goods and services, including hardware and software, necessary in building and operating a cellular network.

12. Applicant's participation in foreign telecommunications ventures with local and strategic partners is generally made necessary by both restrictions on ownership of foreign telecommunications ventures under the laws of many countries, as well as by the benefits, both tangible and intangible, that applicant may obtain from joining with strategic partners both local and international, to create, develop and operate such ventures. The structure of NMG's ventures was not established for the purpose of creating an investment company within the contemplation of the Act. Motorola entities through which NMG operates have never been registered investment companies (or subject to any analogous regulatory scheme in another jurisdiction) nor been held out as primarily engaged in the business of investing, reinvesting, or trading in securities. Applicant represents that it is seeking the requested exemptive order because going forward it would be constrained in its participation in exiting and future foreign telecommunications ventures by the requirements of the Act.

Applicant's Legal Analysis

1. Section 3(a)(1)(C) of the Act defines an ''investment company'' to include any issuer that is engaged in the business of investing, reinvesting, owning, holding, or trading in securities, and owns investment securities having a value exceeding 40% of the value of the issuer's total assets (exclusive of Government securities and cash items). Section 3(a)(2) of the Act defines ''investment securities'' to include, in pertinent part, all securities except securities issued by majority-owned subsidiaries of the owner which are not investment companies and which are not excepted from the definition of investment company by section 3(c)(1) or section 3(c)(7). Section 2(a)(24) defines a ''majority-owned subsidiary'' of a person as a company 50% or more of the outstanding voting securities of which are owned by the person, or by a company which, within the meaning of section 2(a)(24), is majority-owned subsidiary of the person.

2. Rule 3a–1 under the Act deems certain issuers that meet the statutory definition of investment company in section 3(a)(1)(C) of the Act not to be investment companies, provided the issuer meets certain criteria. An issuer can qualify for this exemption only if no more than 45% of its total assets consist of, and no more than 45% of its net income is derived from securities other than, among others, securities of certain companies controlled primarily by the issuer.[3]

3. NMG's business has been conducted almost exclusively in countries outside the United States. In many instances, foreign laws will prohibit or constrain Propel and the other Covered Entities from obtaining or holding controlling positions in telecommunications operating companies. Bidding for a telecommunications license must in many cases be done through a joint venture or consortium. Beyond these legal constraints, a joint investment with one or more strategic partners may be advisable in foreign ventures for a variety of additional reasons, including: (a) a desire to structure ventures so that Propel's management expertise, experience in other markets, and ability to leverage telecommunications services to maximize economies of scale and operating efficiencies complement the assets and local business connections of a partner; (b) the desire for capital financing from third parties; (c) the expertise one or more partners may bring to a foreign venture, including knowledge of local preferences and business practices and existing relationships with suppliers, contractors, government agencies or potential customers; (d) the enhanced intangible appeal that the involvement of an additional major international investor may lend to a bidding contest for a telecommunications license in a developing country; and (e) Propel's desire to test a new market through a relatively small initial commitment of capital undertaken with one or more partners, thereby diversifying the business and financial risks attendant to establishing operations where wireless and other telecommunications businesses have a relatively modest or no established infrastructure or subscriber base.

4. Applicant's holdings at its inception will be such that it may come within the definition of investment company in section 3(a)(1)(C) of the Act. In the absence of the requested relief, applicant would be required to restructure its positions in its existing ventures in order to avoid having to register under the Act. With respect to future ventures, applicant states that the need to structure participation in foreign telecommunications ventures in a manner that complies with the Act would result in severe constraints on Propel's ability to effectively and efficiently operate and grow its business. These constraints principally occur in two areas. The first is in the formation of a potential foreign telecommunications venture. If a Covered Entity is unable to obtain either a majority interest or primary control for purposes of section 3(a)(1)(C) or rule 3a–1, or the type of control that would allow it to obtain an opinion of counsel that it can classify its participation as a joint venture interest, then the Covered Entity would most likely abstain from participating in that foreign telecommunications venture.

5. The second constraint arises after a Covered Entity has acquired its interest in a foreign telecommunications venture. As a venture grows out of the development stage, it will often seek to expand its businesses through acquisitions, or will seek financing in the public capital markets. However, these goals are often in direct conflict with the Covered Entity's need to

[3] ''Primary control'' under rule 3a–1 means a degree of control that is greater than that of any other person. *See* Health Communications Services, Inc. (pub. avail. Apr. 26, 1985).

maintain its ownership interest at a level that avoids an issue under the Act. Applicant submits that this can result in serious restraints on the development of certain foreign telecommunications ventures, a Propel seeks to structure transactions around the requirements of the Act. Applicant states that, at times, when the Covered Entity's interest would fall below the level of presumptive control set forth in section 2(a)(9) of the Act, the Covered Entity may have to deny the foreign telecommunications venture permission to undertake a transaction that would have been in the best interests of the Covered Entity and that venture.

6. Applicant states that a Covered Entity's ability to structure its participation in a foreign telecommunications venture as an unincorporated joint venture or partnership interest is not adequate to permit Propel to conduct its business free of the constraints of the Act. Propel states that whether an arrangement is a joint venture is sometimes difficult to determine.

7. Section 6(c) provides that the SEC may exempt any person, security or transaction from any provision of the Act or any rule or regulation under the Act, if and to the extent that 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. Applicant requests an order under section 6(c) to permit applicant and the other Covered Entities to engage, directly or through subsidiaries, in foreign telecommunications ventures without being subject to the Act.

8. Applicant represents that the requested exemption is necessary and appropriate in the public interest. Applicant asserts that its interests in the foreign telecommunications ventures, unlike the assets of investment companies, will not be liquid, mobile or otherwise readily negotiable. Applicant also states that neither it nor any other Covered Entity will be a ''special situation'' investment company that takes a controlling position in other issuers primarily for the purpose of making a profit in the sale of the controlled company's securities. Applicant states that the Covered Entities will provide active developmental assistance for the purpose of participating in the profits from the foreign telecommunications ventures' operations. Applicant maintains that active developmental assistance requires personnel with expertise in planning, operating, managing, and providing services to a foreign telecommunications venture. Accordingly, applicant asserts that the Covered Entities will engage in business activities that do not entail the types of abuses that the Act was designed to address.

9. Applicant believes that the requested relief is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant represents that the requirements of its business, its strategy that each Covered Entity own or hold directly or indirectly a substantial interest in a foreign telecommunications company or partnership, and its representation that each Covered Entity will provide active developmental assistance to a foreign telecommunications venture demonstrate that the applicant is not of the type that engages in the activities that the Act was designed to address.

Applicant's Conditions

Applicant agrees that the order granting the requested relief will be subject to the following conditions:

1. No Covered Entity that proposes to rely on the requested relief will hold itself out as being engaged in the business of investing, reinvesting or trading in securities.

2. A Covered Entity may rely on the order granting the requested relief only to the extent that the manner in which it is involved in foreign telecommunications ventures does not differ materially from that described in the application.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–23342 Filed 9–11–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43243; File No. SR–Phlx–00–49]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. Relating to the Reporting of Options Transactions

September 1, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 5, 2000, the Philadelphia Stock Exchange (''Phlx'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change relating to the reporting of options transactions. The Phlx filed Amendment No. 1 to this proposal on August 31, 2000.[3] The proposed rule change, as amended, is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 1051, ''Reporting, General Comparison and Clearance Rule,'' and Options Floor Procedure Advice (''OFPA'') F–2, ''Allocation, Time Stamping, Matching and Access to Matched Trades,'' to require the reporting of options transactions within 90 seconds after execution. The text of the proposed rule change, as amended, is set forth below. Additions are in italics.

F–2 Allocation, Time Stamping, Matching and Access to Matched Trades

(a) In order to facilitate timely tape reporting of executed trades, it is the duty of the largest participant in a trade to allocate, match and time stamp manually executed trades as well as to submit the matched trade to the appropriate person at the respective Specialist post immediately upon execution. *A member or member organization initiating an options transaction, whether acting as principal or agent, must report or ensure that the transaction is reported within 90 seconds after execution to the tape. Transactions not reported within 90 seconds after execution shall be designated as late. A pattern or*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Richard S. Rudolph, Counsel, Phlx to Deborah Flynn, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, dated August 31, 2000 (''Amendment No. 1''). Amendment No. 1 requests the Commission to approve the proposed rule change on an accelerated basis and clarifies that if a member fails to report an options transaction within 90 seconds, the report would be considered ''late.'' Additionally, Amendment No. 1 revises the proposed rule language to clarify that a pattern or practice of late reporting, without exceptional circumstances, would be considered conduct inconsistent with just and equitable principles of trade. Amendment No. 1 also clarifies that the three-year running calendar basis for the imposition of the fine schedule in OFPA F–2 begins to run on the date of the first infraction. Amendment No. 1 supersedes a previous amendment filed with the Commission on August 23, 2000. *See* letter from Richard S. Rudolph, Counsel, Phlx to Nancy Sanow, Assistant Director, Divsion, Commission, dated August 22, 2000.

practice of late reporting without exceptional circumstances may be considered conduct inconsistent with just and equitable principles of trade. If there is only one seller and one buyer, the seller is responsible. Execution times must be recorded on the reverse side of one or more of the tickets to a matched trade.

(b) Once a trade has been matched and submitted for reporting at the post, the respective Specialist Unit must preserve the matched tickets for a period of not less than three years.

(c) Member access to tickets comprising a matched trade is available to any participant of that trade, as well as the respective Specialist and any Floor Official acting in his capacity as a Floor Official. Requests to review trade matches must be made with the Specialist Unit.

Fine Schedule (Implemented on a three year running calendar basis)

F–2
1st Occurrence—$100.00
2nd Occurrence—$250.00
3rd Occurrence—$500.00
4th and Thereafter—Sanction is discretionary with Business Conduct Committee

Rule 1051. *Reporting,* General Comparison And Clearance Rule

(a) A member or member organization initiating an options transaction, whether acting as principal or agent, must report or ensure that the transaction is reported within 90 seconds after execution to the tape. Transactions not reported within 90 seconds after execution shall be designated as late. A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with just and equitable principles of trade.

(*b*) All Exchange options transactions shall be reported at the time of execution to the Exchange for comparison of trade information at the specialist's post and all compared transactions shall be cleared through the Options Clearing Corporation and shall be subject to the rules of the Options Clearing Corporation.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx is proposing to amend Phlx Rule 1051 and OFPA F–2 to require timely tape reporting of executed trades on the Options Floor. Under the proposal, as amended, the largest participant in a trade would be required to allocate, match, and time stamp manually executed trades, as well as to submit the matched trade to the appropriate person at the respective specialist post immediately upon execution and no later than 90 seconds following execution of the trade. Additionally, the proposal would require exchange options transactions to be reported to the tape immediately upon execution and no later than 90 seconds after execution of the trade. Under the proposed rule, transactions not reported within 90 seconds after execution would be designated as late. Patterns or practices of late reporting without exceptional circumstances may be considered conduct inconsistent with just and equitable principles of trade.[4]

Currently, Exchange Rule 1051 requires executed trades to be reported at the time of execution. The Exchange's proposal would require immediate trade reporting no later than 90 seconds following execution. The Phlx believes that setting a specific time limit for trade participants to report transactions should enable the Exchange's Market Surveillance Department and Enforcement Department to evaluate and determine accurately any violation of the rule.

The Phlx believes that the proposed rule change will facilitate transparency and help to present a more accurate picture of market activity. Additionally, the Phlx believes that the proposal will help to protect investors and the public interest by requiring the prompt reporting of executed trades to the tape that, in turn, will enable the Exchange to better monitor compliance with order handling and transparency rules, including limit order protection, priority, and best execution.

2. Statutory Purpose

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5)[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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 neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to the File No. SR–Phlx–00–49 and should be submitted by October 3, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposal is consistent with the requirements of the Act.[7] In particular,

[4] In Amendment No. 1, the Phlx incorporated this language into Phlx Rule 1051 and OFPA F–2. The Exchange also clarified that a failure to report a single options transaction within 90 seconds would be considered a violation of the proposed options rule. *See* Amendment No. 1, *supra* note 3.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] In approving this rule, the Commission has considered the proposed rule's impact on

the Commission finds that the proposed rule change furthers the objectives of Section 6(b)(5),[8] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and national market system.

Specifically, the Commission believes that the proposal, as amended, which requires the reporting of all options transactions with 90 seconds of execution, should help to prevent fraudulent and manipulative acts and practices, as well as to promote just and equitable principles of trade. The Commission believes that the proposed rule change, as amended, should enable the Exchange to provide accurate trade information to investors more efficiently. The enhanced transparency associated with timely trade reporting should facilitate price discovery for investors and assist the Phlx's surveillance of its members' trading in listed options.

The Phlx has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission believes the proposal is substantially similar to the Amex proposal to amend Amex rules to require the reporting of options transactions within 90 seconds of execution that was recently reviewed and approved by the Commission.[9] The Amex proposal was noticed for the full 21 day comment period and no comments were received. Accordingly, the Commission finds good cause pursuant to Section 19(b)(2) of the Act[10] to accelerate approval of the proposed rule change, as amended.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–Phlx–00–49), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–23284 Filed 9–11–00; 8:45 am]

BILLING CODE 8010–01–M

efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* Securities Exchange Act Release No. 43233 (Aug. 30, 2000) (approving SR–Amex–00–03).

[10] 15 U.S.C. 78s(b)(2).

[11] *Id.*

[12] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Ticket to Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of meeting.

DATES: September 26–27, 9 a.m.–5 p.m.

ADDRESSES: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria VA 22314, 703–684–5900

SUPPLEMENTARY INFORMATION:

Type of meeting: The meeting is open to the public. The public is invited to participate by coming to the address listed above. The public is also invited to submit comments in writing prior to or at the meeting.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, SSA announces a meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA), Public Law 106–170, establishes the Panel to advise the Commissioner of Social Security, the President and the Congress on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self Sufficiency Program established under section 101(a) of that Act.

This is a deliberative meeting of the Panel. The Panel will meet to discuss the status of TWWIIA implementation. Public testimony regarding the notice of proposed rulemaking published in the **Federal Register** concerning the implementation of TWWIIA will be heard at this meeting. Interested parties are invited to address the panel for a maximum of three minutes. Speakers must submit full comments in writing and will be recognized in the order in which they register for the meeting until the time for public comment has expired. Any interested citizen is encouraged to submit comments concerning this topic in advance of or at the meeting for the Panel's consideration.

Agenda: The meeting will commence at 9 a.m. Tuesday September 26. The Panel will use this time to discuss the status of TWWIIA implementation and the notice of proposed rulemaking announced in the **Federal Register**. An outline of the agenda follows this announcement. A copy of the agenda may also be obtained from the Internet at the web site of SSA's Office of Employment Support Programs at *http://www.ssa.gov/work* or by contacting the Panel staff at the mailing address, Email address, telephone and fax numbers shown below. Requests for materials in alternate formats, *i.e.,* large print, Braille, computer disc, etc. may be made to the Panel staff at the addresses and numbers below.

Records are being kept of all Panel proceedings and will be available for public inspection at the Office of Employment Support Programs web site at *http://www.ssa.gov/work* or by appointment at the office of the Ticket to Work and Work Incentives Advisory Panel staff, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235. Anyone requiring information regarding the Panel should contact the Panel staff by:

- Mail addressed to Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235;
- Telephone at (410) 966–7225.
- Fax at (410) 966–8597.
- Email to TWWIIAPanel@ssa.gov

Dated: September 5, 2000.

Susan M. Daniels,

Deputy Commissioner for Disability and Income Security Programs.

Ticket to Work and Work Incentives; Advisory Panel Meeting, September 26–27, 2000

Tuesday, September 26, 2000

9:00 AM
- Meeting Convenes
- Welcome—Sarah Mitchell, Presiding
- Introductions
- Approval of the Minutes
- Panel Operating Principles and Procedures
- Ticket to Work and Work Incentives Improvement Act (TWWIIA)
- Notice of Proposed Rule Making (NPRM)

11:45–1:00 PM
- Lunch (On Your Own)

1:00 PM
- Meeting Reconvenes Sarah Mitchell, Presiding

1:00 to 3:00 PM

Reserved for Public Testimony
3:30 PM
Panel Discussion
5:00 PM
Adjournment

Wednesday, September 27, 2000

9:00 AM
Meeting Reconvenes—Sarah Mitchell, Presiding
Panel Discussion Continues
11:45–1:00 PM
Lunch (On Your Own)
1:00 PM
Meeting Reconvenes—Sarah Mitchell, Presiding
Follow Up Actions and Assignments
Proposed Time and Place for Fiscal Year 2001 Meetings
Agenda Items for Next Meeting
5:00 PM
Adjournment

[FR Doc. 00–23280 Filed 9–11–00; 8:45 am]

BILLING CODE 4190–29–P

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: The Regional Resource Stewardship Council (Regional Council) will hold a meeting to consider various matters. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2, (FACA).

The meeting agenda includes the following/briefings:

1. Briefings of published economic analyses on water allocation alternatives
2. National Environmental Policy Act
3. Public comments
4. Subcommittee reports

It is the Regional Council's practice to provide an opportunity for members of the public to make oral public comments at its meetings. Public comment session is scheduled from 11:00 a.m.–noon EDT. Members of the public who wish to make oral public comments may do so during the Public comments portion of the agenda. Up to one hour will be allotted for the Public comments with participation available on a first-come, first-served basis. Speakers addressing the Council are requested to limit their remarks to no more than 5 minutes. Persons wishing to speak register at the door and are then called on by the Council Chair during the public comment period. Hand-out materials should be limited to one printed page. Written comments are also invited and may be mailed to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902.

DATES: The meeting will be held in two sessions on Thursday, September 21, 2000, from 8:30 a.m. to 1:30 p.m. and from 3:30 p.m.–5 p.m. EDT.

ADDRESSES: The meeting will be held in Chattanooga, Tennessee, at the Tennessee Valley Authority Chattanooga Office Complex, Missionary Ridge Building, First Floor, Ross Landing Room, 2201 Market Street, Chattanooga, Tennessee 37402, and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Sandra L. Hill, 400 West summit Hill Drive, WT 11A, Knoxville, Tennessee 37902, (865) 632–2333.

Dated: August 31, 2000.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment, Tennessee Valley Authority.

[FR Doc. 00–23321 Filed 9–11–00; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aircraft Accident Liability Insurance; Notice of Request for Extension of a Previously Approved Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice announces the Department of Transportation's (DOT) intention to request the extension of a previously approved collection.

DATES: Comments on this notice must be received by November 13, 2000.

ADDRESSES: Comments should be directed to the Air Carrier Fitness Division (X–56), Office of Aviation Analysis, Office of the Secretary, US Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Delores King, Air Carrier Fitness Division (X–56), Office of Aviation Analysis, Office of the Secretary, US Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2343.

SUPPLEMENTARY INFORMATION:

Title: Aircraft Accident Liability Insurance.

OMB Control Number: 2106–0030.

Expiration Date: February 28, 2001.

Type of Request: Extension of a previously approved collection.

Abstract: 14 CFR part 205 contains the minimum requirements for air carrier accident liability insurance to protect the public from losses, and directs that certificates evidencing appropriate coverage must be filed with the Department.

Respondents: U.S. and foreign air carriers.

Estimated Number of Respondents: 4,270 (avg. 1.3 responses per respondent per year).

Average Annual Burden Per Respondent: .67 hour (.5 hour per response).

Estimated Total Burden on Respondents: 2,762.5 hours.

This information collection is available for inspection at the Air Carrier Fitness Division (X–56), Office of Aviation Analysis, DOT, at the address above. Copies of 14 CFR part 205 can be obtained from Ms. Delores King at the address and telephone number shown above.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice, will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC on September 7, 2000.

Randall D. Bennett,

Acting Director, Office of Aviation Analysis.

[FR Doc. 00–23403 Filed 9–11–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending September 1, 2000

The following Agreements were filed with the Department of Transportation

under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–7893.

Date Filed: September 1, 2000.

Parties: Members of the International Air Transport Association.

Subject: MV/PSC/111 dated July 28, 2000, Recommended Practice 1724 (Mail Vote S074), Intended effective date: October 1, 2000.

Dorothy Y. Beard,

Federal Register Liaison

[FR Doc. 00–23332 Filed 9–11–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2000–7854 Notice 1]

Mercedes-Benz USA, LLC; Receipt of Application for Determination of Inconsequential Non-Compliance

Mercedes-Benz USA, (MBUSA) of Montvale, New Jersey has applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301 ''Motor Vehicle Safety'' for a noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant Crash Protection,'' on the basis that the noncompliance is inconsequential to motor vehicle safety. MBUSA has filed a report of noncompliance pursuant to 49 CFR Part 573 ''Defects 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 judgement concerning the merits of the application.

Description of Noncompliance

MBUSA is a wholly owned subsidiary of DaimlerChrysler, AG (DCAG). MBUSA is incorporated in the state of Delaware and conducts business throughout the United States from the Company's headquarters at One Mercedes Drive, Montvale, New Jersey, 07645.

A limited number of model year 2000 Mercedes-Benz M-Class vehicles, manufactured by Mercedes-Benz, U.S. International, Inc. (MBUSI), the domestic manufacturing subsidiary of DCAG, are equipped with audible seat belt warning devices that do not meet certain requirements mandated by FMVSS No. 208. Specifically, FMVSS No. 208 requires that all passenger vehicles of less than 10,000 pounds gross vehicle weight rating (GVWR) incorporate a visual and audible seat belt warning system that alerts the driver when the seat belt is unbuckled and the vehicle's ignition switch is moved to either the ''on'' or ''start'' position. Manufacturers are afforded two options regarding the visual and audible warning requirements. Specifically, FMVSS No. 208, Paragraph S7.3 states:

''(a) A seat belt assembly provided at the driver's seating position shall be equipped with a warning system that, at the option of the manufacturer, either—

(1) Activates a continuous or intermittent audible signal for a period of not *less than 4 seconds and not more than 8 seconds*

(2) and that activates a continuous or flashing warning light visible to the driver displaying the identifying symbol for the seat belt telltale shown in Table 2 of FMVSS 101 or, at the option of the manufacturer if permitted by FMVSS 101, displaying the words ''Fasten Seat Belts'' or ''Fasten Belts'', for not less than 60 seconds (beginning when the vehicle ignition switch is moved to the ''on'' or ''start'' position) *when condition (b) exists simultaneously with condition (c),* or that

(3) Activates for a period of not less than 4 seconds and not more that 8 seconds (beginning when the vehicle ignition switch is moved to the ''on'' of the ''start'' position), a continuous or flashing warning light visible to the driver, displaying the identifying symbol of the seat belt telltale shown in Table 2 of FMVSS 101 or, at the option of the manufacturer, if permitted by FMVSS 101, displaying the words ''Fasten Seat Belts'' or ''Fasten Belts,'' when condition (b) exists, and *a continuous or intermittent audible signal when condition (b) exists simultaneously with condition (c).*

(b) The vehicle's ignition switch is moved to the ''on'' position or to the ''start'' position.

(c) The driver's lap belt is not in use, as determined, at the option of the manufacturer, either by the belt latch mechanism not being fastened, or by the belt not being extended by at least 4 inches from its stowed position.'' (emphasis added)

In the M-Class vehicles identified above, the seat belt warning system operates as follows. If a driver enters the vehicle, but neglects to fasten his/her seat belt, when the driver turns the ignition to the ''on'' or ''start'' position, a visual warning will flash and an audible warning will sound for eight seconds or until the driver buckles his/her seat belt. If a driver enters the vehicle and promptly fastens his/her seat belt and then turns the ignition to the ''on'' or ''start'' position, the visual warning will flash for four to eight seconds. In addition, the audible warning will sound for a brief period of time less than four seconds (approximately two seconds). This additional audible warning was intended to act as part of the vehicle start-up systems check to alert the driver that all warning systems are fully operational. Based on a July 12, 2000 letter of interpretation from NHTSA, however, MBUSA has learned that the additional two-second audible warning that occurs after the seat belt is fastened is not in compliance with the requirements of FMVSS No. 208 S7.3. Accordingly, MBUSA submitted this petition for determination of inconsequential noncompliance with regards to the extra seat belt buzzers.

Supporting Information Submitted by MBUSA

MBUSA does not believe that the foregoing noncompliance will impact motor vehicle safety for a number of reasons. Specifically, a very limited number of these vehicles were produced with the extra buzzer in model year 2000. No other model year vehicles have this feature. In addition, because the audible and visual seat belt warning work as otherwise required by FMVSS No. 208, MBUSA believes that the extra buzzer is, at worst, an annoyance to the driver and does not detract from the safety intent served by the audible signal. Moreover, since the vast majority of vehicle owners do not even buckle their seat belts until after starting their vehicle, MBUSA does not believe that drivers will even notice this extra feature. Those that do notice this feature will only encounter it during vehicle start up and at no other time (i.e., while the vehicle is in operation). Consequently, MBUSA believes this noncompliance is inconsequential to motor vehicle safety.

MBUSA introduced the additional two-second buzzer as a new feature into its model year 2000 M-Class vehicles at the beginning of production. Because a question had arisen regarding the compliance status of this feature with the requirements of FMVSS 208, this feature was removed while model year 2000 M-Class vehicles were in production in order to allow MBUSA time to obtain a definitive response from NHTSA. As a result, only a very limited number of these vehicles were produced with the additional buzzer feature. MBUSA estimates that only 4,354 out of 56,264 vehicles produced as of August 17, 2000 has this feature. This figure

represents only 7.7% of the M-Class vehicles manufactured and sold for model year 2000 to date. This figure will be even lower as production and sale of the 2000 model year vehicle continues. As a result of this extremely low number, MBUSA does not believe that vehicles equipped with the additional buzzer pose a substantial decrease in safety for M-Class owners.

MBUSA continues to believe that the additional buzzer will enhance safety. Specifically, as noted in their October 5, 1999 request for interpretation, MBUSA incorporated this additional buzzer as a systems check to alert vehicle operators of the proper functioning of the audible warning system. Given the extremely short duration of this additional buzzer (approximately two seconds), MBUSA believes that the annoyance factor is low in comparison to the value provided by the systems check. Additionally, the brief audible signal alerted drivers to the importance of safety belt use. While the driver may have been buckled when this alert sounded, the extra reminder may still have been helpful in reminding drivers that other occupants should also be sure to fasten their seat belts, MBUSA believes that this reminder is analogous to the Ford Motor Company's planned new ''Belt-Minder'' system. As described at the Ford Motor Company Web site,

[t]he Belt-Minder system will use a safety belt usage sensor located in the belt buckle to determine whether a driver is buckled up. The sensor feeds this information to a control module, and if a driver is unbelted when the vehicle is in motion, a red light in the instrument panel will illuminate and a chime will intermittently sound to remind customers to use their safety belts. In time, the system will be expanded to offer front-seat passengers the same type of reminder.

See, *http://www.ford.com/default.asp?pageid=69 &storyid=274*. Like the Ford Motor Company Belt-Minder system, the Mercedes-Benz system also serves to remind drivers of the importance of seat belt use and to assure drivers that the buzzer is working. Thus, MBUSA believe the buzzer enhances safety and as such represents a noncompliance that is inconsequential to motor vehicle safety.

MBUSA also believes that the situations in which the additional buzzer will operate also does not negatively impact motor vehicle safety. Specifically, the additional buzzer only sounds under certain conditions, namely upon vehicle startup when the driver has already fastened his seat belt. In this limited situation, the vehicle engine has just been started and the vehicle is typically not yet in motion. By the time the driver engages the transmission and proceeds, the additional buzzer has already run through its systems check and has shut off. Thereafter, the only time the buzzer will again sound is when the vehicle engine is restarted after it has first been stopped and turned off. Consequently, the buzzer will not operate anytime the vehicle is in motion where it may otherwise distract the driver. For this additional reason, MBUSA believes that the extra buzzer, while not in compliance with the requirements of FMVSS No. 208, is not a noncompliance that will negatively impact motor vehicle safety.

Based on the above analysis, MBUSA does not believe that the extra seat belt warning buzzer has any appreciable impact on motor vehicle safety. Unbelted drivers will receive both the audible and visual warnings for eight seconds as required by FMVSS No. 208 when the vehicle's ignition is turned to the ''on'' or ''start'' position. Belted drivers receive the visual warning and a two second audible warning check that merely informs him/her that the audible warning system is operational and reminds the driver of the importance of seat belt use. Due to the extremely short duration of the check audible warning versus the audible warning indicating the need to fasten seat belts, MBUSA believes that belted drivers will not be unduly bothered or confused by the check audible warning. As a result, the MBUSA believes that there will be no diminished effect to the full eight second warning to unbelted drivers reminding them to buckle up. In addition, the additional check buzzer does not operate in situations where the vehicle may be in motion, thus not providing a distraction for vehicle operators that may interfere with operation of the vehicle. Finally, the number of affected vehicles is small (i.e., approximately 7%). For the foregoing reasons, MBUSA has requested NHTSA grant the petition for determination of inconsequential noncompliance.

Interested persons are invited to submit written data, views and arguments on the petition of MBUSA, described above. Comments should refer to the Docket Number and be submitted to: Docket Management, National Highway Traffic Safety Administration, 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 practicable. 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: October 12, 2000,

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8).

September 6, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–23333 Filed 9–11–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33895] [1]

Ohio Southern Railroad, Incorporated—Acquisition and Operation Exemption—Pennsylvania Lines LLC and Norfolk Southern Railway Company

Ohio Southern Railroad, Incorporated (OSRR), a Class III carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire by sublease from Pennsylvania Lines LLC (PRR) and Norfolk Southern Railway Company (NSR) and operate approximately 2.3 route miles of rail line between milepost RQ 36.0, at Wilbren, OH, and milepost RQ 38.1, at New Lexington, OH, including connecting tracks in the vicinity of New Lexington (line).[2]

The transaction was expected to be consummated promptly following the effective date of the exemption. The earliest the transaction could be

[1] On August 25, 2000, the Ohio Southern Railroad, Incorporated filed an Amended Verified Notice of Exemption in STB Finance Docket No. 33895. The notice being served today corrects and supersedes the Board's initial notice that was served on July 18, 2000, and published the same date at 65 FR 44571 by clarifying that the total length of track being acquired is 2.3 route miles and includes connecting tracks in the vicinity of New Lexington. The remainder of the Board's July 18, 2000 notice remains unchanged.

[2] On July 5, 2000, NSR filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered an agreement between PRR, NSR and OSRR for the grant by OSRR to NSR of overhead trackage rights over the line. The trackage rights will enable NSR to continue operations over the line and facilitate the development of a more efficient routing for both OSRR and NSR to move traffic more expeditiously in the region. *See Norfolk Southern Railway Company—Trackage Rights Exemption—Ohio Southern Railroad, Incorporated in Perry County, OH,* STB Finance Docket No. 33900 (STB served July 18, 2000).

consummated was July 7, 2000, 7 days after the exemption was filed.

The transaction is related to *Ohio Southern Railroad, Incorporated—Acquisition and Operation Exemption—Glouster Coal Company, Glouster, OH*, STB Finance Docket No. 33896 (STB served July 18, 2000) and *Ohio Southern Railroad, Incorporated—Trackage Rights Exemption—Pennsylvania Lines LLC and Norfolk Southern Railway Company,* STB Finance Docket No. 33902 (STB served July 18, 2000), to exempt OSRR's extension of service over Glouster Coal Company's line serving its Buckingham Mine and OSRR's trackage rights over NSR's West Secondary line from New Lexington to a point near Glouster, OH. Upon consummation of these transactions OSRR will be able to provide coal transportation service in conjunction with NSR from the Buckingham Mine to customers of Glouster Coal Company located on or accessed via the lines of OSRR.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33895, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Kelvin J. Dowd, Esq., Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, DC 20036.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: September 5, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–23340 Filed 9–11–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Closed Meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, D.C.

DATES: The meeting will be held September 27 and 28, 2000.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on September 27 and 28, 2000, in room 4600E, beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, C:AP:AS, 1099 14th Street, NW., Washington, DC 20005. Telephone (202) 694–1861 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory

Committee Act, 5 U.S.C. App. (1988), that a closed meeting of the Art Advisory Panel will be held on September 27 and 28, 2000, in room 4600E, beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7) of Title 5 of the United States Code, and that the meeting will not be open to the public.

The Commissioner of Internal Revenue has determined that this document is not a significant regulatory action as defined in Executive Order 12866 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–23390 Filed 9–11–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Brooklyn District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Thursday, October 12, 2000.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Thursday October 12, 2000, 6 p.m. to 9 p.m. at the Internal Revenue Service Brooklyn Building located at 625 Fulton Street, Brooklyn, NY 11201. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 8:30 p.m. to 9 p.m. on Thursday, October 12, 2000. Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY, 11201.

The Agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: August 30, 2000.

John J. Mannion,

Program Manager, TAS.

[FR Doc. 00–23389 Filed 9–11–00; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 65, No. 177

Tuesday, September 12, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–125–001]

Casco Bay Energy Company, LLC, Duke Energy Oakland, LLC, Duke Energy Trenton, LLC, Duke Energy South Bay, LLC, Duke Energy Morro Bay, LLC, and Duke Energy Moss Landing, LLC; Notice of Filing

Correction

In notice document 00–22474 appearing on page 53284 in the issue of Friday, September 1, 2000, the docket number should read as set forth above.

[FR Doc. C0–22474 Filed 9–11–00; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

[FRL 6857–8]

Proposed Settlement Agreement, Clean Air Act Petitions for Review

Correction

In notice document 00–22051 appearing on page 52424, in the issue of Tuesday, August 29, 2000, make the following correction:

On page 52424, in the third column, the 10th line from the bottom, ''(202) 546+5566'' should read ''(202) 564–5566''.

[FR Doc. C0–22051 Filed 9–11–00; 8:45 am]

BILLING CODE 1505–01–D

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2635

RIN 3209–AAO4

Standards of Ethical Conduct for Employees of the Executive Branch; Definition of Compensation for Purposes of Prohibition on Acceptance of Compensation in Connection With Certain Teaching, Speaking and Writing Activities

Correction

Interim rule document 00–22612 was inadvertently published in the Proposed Rules section of the issue of Tuesday, September 5, 2000 beginning on page 53650. It should have appeared in the Rules and Regulations section.

[FR Doc. C0–22612 Filed 9–11–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 447 and 457

State Child Health; State Children's Health Insurance Program Allotments and Payments to States

Correction

In the issue of Monday, June 19, 2000, on page 38027, in the second column, in the correction of rule document 00-12879, CFR title ''45'' is corrected to read CFR title ''42'' as set forth above.

[FR Doc. C0–12879 Filed 9–11–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4566–N–11]

Notice of Proposed Information Collection: Comment Request, Historically Black Colleges and Universities (HBCUs) Program

Correction

In notice document 00–22351 beginning on page 53022, in the issue of Thursday, August 31, 2000, make the following corrections:

1. On page 53022, in the third column, the 26th line from the bottom, '' 28880'' should read ''2880''.

2. On the same page, in the same column, in the last paragraph, in the fifth line, ''20754'' should read ''27054''.

[FR Doc. C0–22351 Filed 9–11–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–17]

Modification of Class E Airspace; Dickinson, ND

Correction

In rule document 00–21815 beginning on page 52015 in the issue of Monday, August 28, 2000, make the following correction:

§71.1 [Corrected]

On page 52016, in the first column, in §71.1, under the heading ''**AGL ND E5 Dickinson, ND [Revised]**'', in the 13th line, ''225.2–mile'' should read ''25.2–mile''.

[FR Doc. C0–21815 Filed 9–11–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
September 12, 2000

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 410 and 414

Medicare Program; Payment of Ambulance Services, Fee Schedule; and Revision to Physician Certification Requirements for Coverage of Nonemergency Ambulance Services; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 410 and 414

[HCFA–1002–P]

RIN 0938–AK07

Medicare Program; Fee Schedule for Payment of Ambulance Services and Revisions to the Physician Certification Requirements for Coverage of Nonemergency Ambulance Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish a fee schedule for the payment of ambulance services under the Medicare program, implementing section 1834(l) of the Social Security Act. As required by that section, this proposed fee schedule for ambulance services was the product of a negotiated rulemaking process that was carried out consistent with the Federal Advisory Committee Act. The fee schedule described in this proposed rule would replace the current retrospective reasonable cost reimbursement system for providers and the reasonable charge system for suppliers of ambulance services. In addition, this proposed rule would require that payment for ambulance services would be made only on an assignment related basis; establish new codes to be reported on claims for ambulance services; establish increased payment for ambulance services furnished in rural areas based on the location of the beneficiary at the time the patient is placed on board the ambulance; and revise the physician certification requirements for coverage of nonemergency ambulance services.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 13, 2000.

ADDRESSES: Mail written comments (one original and three copies) to the following address ONLY: Health Care Financing Administration, Department of Health and Human Services, Attn: HCFA–1002–P, P.O. Box 8013, Baltimore, MD 21244–8013.

Since comments must be *received* by the date specified above, please allow sufficient time for mailed comments to be received timely in the event of delivery delays. If you prefer, you may deliver your written comments (one original and three copies) by courier to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or

C5–15–03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the two above addresses may be delayed and received too late to be considered.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1002–P.

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC 20201, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Margot Blige, (410) 786–4642, for coverage issues. Glenn McGuirk, (410) 786–5723, for payment issues.

SUPPLEMENTARY INFORMATION:

I. Background

A. Current Payment System

The Medicare program pays for ambulance services on a reasonable cost basis when furnished by a provider and on a reasonable charge basis when furnished by a supplier. (For purposes of this discussion, the term ''provider'' means all Medicare-participating institutional providers that submit claims for Medicare ambulance services (hospitals (including critical access hospitals), skilled nursing facilities (SNFs), and home health agencies (HHAs)). The term ''supplier'' means an entity that is independent of any provider.) The reasonable charge methodology which is the basis of payment for ambulance services furnished by ambulance suppliers is determined by the lowest of the customary, prevailing, actual, or inflation indexed charge (IIC).

The following describes the current billing methods for ambulance services:

- Method 1 is a single, all-inclusive charge reflecting all services, supplies, and mileage.
- Method 2 is one charge reflecting all services and supplies (base rate) with a separate charge for mileage.
- Method 3 is one charge for all services and mileage, with a separate charge for supplies.
- Method 4 is separate charges for services, mileage, and supplies.

Over the past 20 years, the Congress has been moving towards fee schedules and prospective payment systems for Medicare payment. In the case of ambulance services, the reasonable charge methodology has resulted in a wide variation of payment rates for the same service depending on location. In addition, this payment methodology is administratively burdensome, requiring substantial recordkeeping for historical charge data. The Congress, under the Balanced Budget Act of 1997 (BBA), (Pub. L. 105–33), mandated the establishment of a fee schedule for payment of ambulance services.

B. Recent Legislation

1. Balanced Budget Act of 1997

Section 4531(b)(2) of the BBA added a new section 1834(l) to the Social Security Act (the Act). Section 1834(l) of the Act requires that we establish a national fee schedule for payment of ambulance services furnished under Medicare Part B. This section also requires that in establishing the ambulance fee schedule, we will—

- Establish mechanisms to control increases in expenditures for ambulance services under Part B of the Medicare program;
- Establish definitions for ambulance services that link payments to the type of services furnished;
- Consider appropriate regional and operational differences;
- Consider adjustments to payment rates to account for inflation and other relevant factors;
- Phase in the fee schedule in an efficient and fair manner; and,
- Require payment for ambulance services be made only on an assignment related basis.

In addition, the BBA requires that ambulance services covered under Medicare be paid based on the lower of the actual billed charge or the ambulance fee schedule amount. The BBA also requires that total payments under the ambulance fee schedule may be no more than what would have been paid if the ambulance fee schedule were not in effect. As discussed below, we intended to incorporate $65 million in program savings in the 1998 base year data upon which the ambulance fee schedule is calculated consistent with the statutory requirement that, in the aggregate, we pay no more than would have been paid in the absence of the fee schedule for CY 2001. This amount correlates to $67.3 million when updated for the effects of inflation.

2. Balanced Budget Refinement Act of 1999

Section 412 of the Medicare, Medicaid, and the State Child Health

Insurance Program Balanced Budget Refinement Act of 1999 (BBRA) provided a new definition for the term ''rural'' in the context of the Medicare coverage provision for paramedic advanced life support (ALS) intercept services. The BBRA states that, effective for services furnished on or after January 1, 2000:

> An area shall be treated as a rural area if it is designated as a rural area by any law or regulation of the State or if it is located in a rural census tract of a metropolitan statistical area (as determined under the most recent Goldsmith modification, originally published in the **Federal Register** on February 27, 1992 (57 Fed. Reg. 6725)).

This definition applies only to the Medicare paramedic ALS intercept benefit implemented at 42 CFR 410.40(c). This is a very limited benefit and to date we know of only one State (New York) with areas that meet the statutory requirements. (See the March 15, 2000 final rule (65 FR 13911).) For all other ambulance services, the definition of ''rural'' specified in this proposed rule would apply.

C. Components of Ambulance Fee Schedule Payment Amounts

In general, the payment amount for each air ambulance service paid under the ambulance fee schedule would be the product of two primary factors: (1) A nationally uniform unadjusted base rate; and (2) a geographic adjustment factor for an ambulance fee schedule area. A detailed description of these factors is discussed in this proposed rule.

In general, the payment amount for each ground ambulance service paid under the ambulance fee schedule would be the product of three primary factors: (1) A nationally uniform relative value for the service; (2) a geographic adjustment factor for an ambulance fee schedule area; and (3) a nationally uniform conversion factor (CF) for the service. A detailed description of these factors is discussed in this proposed rule.

Relative value units (RVUs) measure the value of ambulance services relative to the value of a base level ambulance service. Thus, if the value of the resources necessary to furnish service B are twice the value of the resources needed to furnish service A, service B will have RVUs that are twice the value of the RVUs for service A. RVUs are multiplied by a CF expressed as a dollar value to produce a payment amount. The RVUs represent, on average, the relative resources associated with the various levels of ambulance services.

Because the fee schedule is based on the relative values of different levels of ground ambulance services relative to a basic life support ground ambulance service, a factor is needed in order to convert the relative value to a dollar amount equal to the national base payment rate. In order to determine the conversion factor (CF), the general approach is first to determine the total amount of money available and divide that total by the total number of relative value units. As we describe in more detail below, we used 1998 Medicare ambulance claims data to determine the total RVUs in this calculation. The total dollars is equal to the total allowed charges for all ambulance services billed to Medicare in 1998, less the $65 million adjustment for those basic life support (BLS) services that had been paid at the advanced life support (ALS) services payment rate, as described in Section 1834(l)(3) of the Act. This section states that, in establishing the ambulance fee schedule, the Secretary must ensure that the aggregate amount of payment made for ambulance services in calendar year (CY) 2000 does not exceed the aggregate amount of payment that would have been made absent the fee schedule. In the January 22, 1999 notice concerning the negotiated rule meetings, we stated that, although we were postponing final agency action on the proposal to define BLS and ALS services because of the BBA requirement that this issue be subject to negotiated rulemaking, we believe that the savings that would have been realized through implementation of that policy should not be lost to the Medicare program. We determined that $65 million in program savings would have been realized in the base year 1998 data if the final rule had been in effect. The total RVUs are equal to the sum of the total number of allowed services that were billed in 1998 for each of the categories (levels) of ambulance services established by the negotiated rulemaking committee multiplied by the respective relative value of each of the new levels of service.

Section 4531(b)(3) of the BBA provides that the fee schedule was to be effective for ambulance services furnished on or after January 1, 2000. However, because of other statutory obligations and the scope of systems changes required to implement the ambulance fee schedule, we could not meet this statutory deadline while assuming that our respective systems were compliant with the Year 2000 requirements. Therefore, because we were unable to implement the ambulance fee schedule on January 1, 2000, we delayed implementation of the fee schedule for ambulance services until January 1, 2001. This action is in keeping with our objective to have the ambulance fee schedule become effective as soon as possible after the January 1, 2000 statutory date, given our Year 2000 activities and our other statutory obligations to implement various revised payment systems in calendar year 2000.

D. Negotiated Rulemaking Process

Section 1834(l)(1) of the Act provided that the ambulance fee schedule be established through the negotiated rulemaking process described in the Negotiated Rulemaking Act of 1990 (Pub. L. 101–648, 5 U.S.C. 561–570). Prior to using negotiated rulemaking under the Negotiated Rulemaking Act, the head of an agency must generally consider whether the following conditions exist:

- There is a need for a rule.
- There are a number of identifiable interests that will be significantly affected by the rule.
- There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who—
  - + Can adequately represent the interests identified; and,
  - + Are willing to negotiate in good faith to reach a consensus on the proposed rule.
- There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed time frame.
- The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of a final rule.
- The agency has adequate resources and is willing to commit its resources, including technical assistance, to the committee.
- The agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee as the basis for the rule proposed by the agency for notice and comment.

Negotiations were conducted by a committee chartered under the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2). We used the services of an impartial convener to help identify interests that would be significantly affected by the proposed rule (including residents of rural areas) and the names of persons who were willing and qualified to represent those interests. The Negotiated Rulemaking Committee on the Medicare Ambulance Services Fee Schedule (that is, ''the Committee'') consisted of national representatives of interests that were likely to be

significantly affected by the fee schedule. (Additional information about the negotiations can be found in the January 22, 1999 notice or may be accessed at our Internet website at http://www.hcfa.gov/medicare/ambmain.htm.)

To the extent that this proposed rule accurately reflects the Committee Statement as signed on February 14, 2000, each member to the Committee has agreed not to comment on those issues on which consensus was reached.

E. Interaction With the Proposed Rule Published on June 17, 1997

On June 17, 1997, we published a proposed rule (62 FR 32715) in the **Federal Register** to revise and update the Medicare ambulance services regulations at 42 CFR 410.40. Specifically, we proposed: to base Medicare payment on the level of ambulance service required to treat the beneficiary's condition; to clarify and revise the policy on coverage of nonemergency ambulance services; and to set national vehicle, staff, billing, and reporting requirements. As noted above, section 1834(l)(2) of the Act provides, in part, that in establishing the ambulance fee schedule, the Secretary will establish definitions for ambulance services that link payments to the types of services furnished. One of the provisions of the June 17, 1997 proposed rule would have defined ambulance services as either BLS or ALS and linked Medicare payment to the type of service required by the beneficiary's condition. We received a large number of comments on this issue, and, in general, commenters were very concerned about our proposal. In light of that concern and because defining ambulance services is a required element of this negotiated rulemaking (under section 1834(l) of the Act), we decided not to proceed with a final rule on the definition of BLS and ALS services. Instead, we included this issue as a matter for the Committee. We did, however, proceed with a final rule on all other issues of the June 17, 1997 proposed rule. That rule was published on January 25, 1999 (64 FR 3637).

Section 1834(l)(3) of the Act provides that, in establishing the ambulance fee schedule, the Secretary must ensure that the aggregate amount of payment made for ambulance services in calendar year (CY) 2000 does not exceed the aggregate amount of payment that would have been made absent the fee schedule. In the January 22, 1999 notice concerning the negotiated rule meetings, we stated that, although we were postponing final agency action on the proposal to define BLS and ALS services because of the BBA requirement that this issue be subject to negotiated rulemaking, we believe that the Medicare program should not lose the savings that would have been realized through implementation of that policy. We determined that $65 million in program savings would have been realized in the base year 1998 data if the final rule had been in effect. After adjusting for inflation, program savings for CY 2001 have been estimated at $67.6 million. Therefore, in the January 22, 1999 notice (64 FR 3474), we stated that we intended to incorporate these savings in the base amount upon which the fee schedule is calculated consistent with the statutory requirement that in the aggregate we pay no more than would have been paid in the absence of the fee schedule.

II. Provisions of the Proposed Rule

A. Proposed Changes Based on Negotiated Rulemaking

In accordance with the negotiated rulemaking procedures described above, we propose the following additions to Part 414 based on the recommendations of the Committee.

1. Definitions and levels of services. In Part 414, we propose to add Subpart H, § 414.605 that would define several levels of ground ambulance services ranging from BLS to specialty care transport. (Note that the term ''ground'' refers to both land and water transportation. The definitions and RVUs for each of the levels of service are described in § 414.605, ''Definitions.'') Also, the rate per ground mile for all ground ambulance services would be the same for each level of service.

During 1990, the development of a training blueprint and the evaluation of current levels of prehospital provider training and certification were identified as priority needs for national emergency medical services (EMS). As a result, the National EMS Training Blueprint Project was formed.

In May 1993, representatives of EMS organizations adopted the National EMS Education and Practice Blueprint (Blueprint) consensus document. This consensus document is used as the basis for defining the levels of service. As stated in the National EMS Education and Practice Blueprint, Executive Summary, printed September 1993, ''The Blueprint divides the major areas of prehospital instruction and/or core performance into 16 'core elements'.'' For each core element, the Blueprint recommends that there be four levels of prehospital EMS providers ''corresponding to various knowledge and skills in each of the core elements.'' At the First Responder level, personnel use a limited amount of equipment to perform initial assessments and interventions. The EMT—Basic has the knowledge and skill of the First Responder, but is also qualified to function as the minimum staff for an ambulance. EMT—Intermediate personnel has the knowledge and skills identified at the First Responder and EMT—Basic levels, but is also qualified to perform essential advanced techniques and to administer a limited number of medications. The EMT—Paramedic, in addition to having the competencies of an EMT—Intermediate, has enhanced skills and can administer additional interventions and medications.

Since the release of the Blueprint, a consensus panel of EMS educators has recommended that the Department of Transportation, National Highway Traffic and Safety Administration (DOT/NHTSA) revise the document. DOT/NHTSA has accepted the recommendation of the panel and expects to release a revised Blueprint or an equivalent document in the near future.

To request a copy of the National Emergency Medical Services Education and Practice Blueprint, please fax your request to: NHTSA/EMS Division, (202) 366–7721. Please include your name and address. Because of staffing and resource limitations NHTSA will forward the requested document via regular mail.

There would be two levels of air ambulance services to distinguish fixed wing from rotary wing (helicopter) aircraft. In addition, to recognize the operational cost differences of the two types of aircraft, there would be two distinct payment amounts for air ambulance mileage. The air ambulance services mileage rate would be calculated per actual loaded (patient onboard) miles flown, expressed in statute miles (that is, ground, not nautical, miles.)

We are proposing the following seven levels of ambulance services.

a. Basic Life Support (BLS)—When medically necessary, the provision of basic life support (BLS) services as defined in the National Emergency Medicine Services (EMS) Education and Practice Blueprint for the Emergency Medical Technician-Basic (EMT-Basic) including the establishment of a peripheral intravenous (IV) line.

b. Advanced Life Support, Level 1 (ALS1)—When medically necessary, this is the provision of an assessment by an advanced life support (ALS) ambulance provider or supplier and the

furnishing of one or more ALS interventions. An ALS assessment is performed by an ALS crew and results in the determination that the patient's condition requires an ALS level of care, even if no other ALS intervention is performed. An ALS provider or supplier is defined as a provider trained to the level of the EMT-Intermediate or Paramedic as defined in the National EMS Education and Practice Blueprint. An ALS intervention is defined as a procedure beyond the scope of an EMT-Basic as defined in the National EMS Education and Practice Blueprint.

c. Advanced Life Support, Level 2 (ALS2)—When medically necessary, the administration of at least three different medications or the provision of one or more of the following ALS procedures:

- Manual defibrillation/cardioversion.
- Endotracheal intubation.
- Central venous line.
- Cardiac pacing.
- Chest decompression.
- Surgical airway.
- Intraosseous line.

d. Specialty Care Transport (SCT)—When medically necessary, for a critically injured or ill beneficiary, a level of interhospital service furnished beyond the scope of the paramedic as defined in the National EMS Education and Practice Blueprint. This is necessary when a beneficiary's condition requires ongoing care that must be furnished by one or more health professionals in an appropriate specialty area (for example, nursing, emergency medicine, respiratory care, cardiovascular care, or a paramedic with additional training).

e. Paramedic ALS Intercept (PI)—These services are defined in § 410.40(c) ''Paramedic ALS Intercept Services''. These are ALS services furnished by an entity that does not provide the ambulance transport. Under limited circumstances, Medicare payment may be made for these services. (To obtain additional information about paramedic ALS intercept services, please refer to the March 15, 2000 final rule (65 FR 13911)).

f. Fixed Wing Air Ambulance (FW)—Fixed wing air ambulance services are covered when the point from which the beneficiary is transported to the nearest hospital with appropriate facilities is inaccessible by land vehicle, or great distances or other obstacles (for example, heavy traffic) and the beneficiary's medical condition is not appropriate for transport by either BLS or ALS ground ambulance.

g. Rotary Wing Air Ambulance (RW)—Rotary wing (helicopter) air ambulance services are covered when the point from which the beneficiary is transported to the nearest hospital with appropriate facilities is inaccessible by ground vehicle, or great distances or other obstacles (for example, heavy traffic) and the beneficiary's medical condition is not appropriate for transport by either BLS or ALS ground ambulance.

2. Emergency Response Adjustment Factor

We are proposing to add § 414.610, ''Basis of Payment,'' paragraph (c)(1), to state that for the BLS and ALS1 levels of service, an ambulance service that qualifies as an emergency response service would be assigned higher RVUs to recognize the additional costs incurred in responding immediately to an emergency medical condition. An immediate response is one in which the ambulance supplier begins as quickly as possible to take the steps necessary to respond to the call. No emergency response adjustment factor applies to PI, ALS2, SCT, FW, or RW.

3. Operational Variations

We are proposing to add § 414.610(a) which would state that the ambulance fee schedule applies to all entities that furnish ambulance services, regardless of type. For example, all public or private, for profit or not-for-profit, volunteer, government-affiliated, institutionally-affiliated or owned, or wholly independent supplier ambulance companies, however organized, would be paid according to this ambulance fee schedule.

4. Regional Variations

a. Cost of living differences:

The payment for ambulance services would be adjusted to reflect the varying costs of conducting business in different regions of the country. We would adjust the payment by the geographic adjustment factor (GAF), equal to the practice expense (PE) portion of the geographic practice cost index (GPCI) for the Medicare physician fee schedule. (For purposes of this document, we use the abbreviation ''GPCI'' to mean the PE portion of the GPCI.) The GPCI is an index that reflects the relative costs of certain components of a physician's costs of doing business (for example, employee salaries, rent, and miscellaneous expenses) in one area of the country versus another. The geographic areas would be the same as those used for the physician fee schedule. (A detailed discussion of the physician fee schedule areas can be found in the July 2, 1996 proposed rule (61 FR 34615) and the November 22, 1996 final rule (61 FR 59494).)

The GPCI would be applied to 70 percent of the base payment rate for ground ambulance services; this percentage approximates the portion of ground ambulance service costs that are represented by salaries. Similarly, the GPCI would be applied to 50 percent of the base payment rate for air ambulance services. The GPCI would not be applied to the mileage payment rate. In addition, the applicable GPCI would be based on the geographic location at which the beneficiary is placed on board the ambulance.

We would use the most recent GPCI; the physician fee schedule law requires that the GPCI be updated every 3 years. The next revision will be effective January 1, 2001. We anticipate using the updated data, which was proposed in the July 17, 2000 proposed rule on the physician fee schedule (65 FR 44176).

b. Services furnished in rural areas:

We are proposing to add § 414.610(c)(1)(v) which would state that an adjustment would be made to increase the base payment rate for ambulance services furnished in rural areas. This adjustment would be made because of the additional cost per ambulance trip of isolated, essential ambulance suppliers (that is, when there is only one ambulance service in a given geographic area) for which there are not many trips furnished over the course of a typical month because of a small rural population. While we recognize the inadequacy of the methodology to completely compensate for these costs (that is, not every rural ambulance supplier is isolated, essential, low-volume, and the definition of rural we are proposing is not as precise as other alternatives), we propose an additional adjustment to increase the mileage rate if the location at which the beneficiary is placed on board the ambulance is located in a rural area. The definition of a rural area would be an area outside a Metropolitan Statistical Area (MSA) or a New England County Metropolitan Area, or an area within an MSA identified as rural, using the Goldsmith modification.

The Goldsmith modification evolved from an outreach grant program sponsored by the Office of Rural Health Policy of the Health Resources and Services Administration (HRSA) of the Department of Health and Human Services. This program was created to establish an operational definition of rural populations lacking easy geographic access to health services in large counties with metropolitan cities. Using 1980 census data, Dr. Harold F. Goldsmith and his associates created a methodology for identifying rural census tracts located within a large

metropolitan county of at least 1,225 square miles. However, these census tracts are so isolated by distance or physical features that they are more rural than urban in character. Additional information regarding the Goldsmith modification can be found on the Internet at http://www.nal.usda.gov/orhp/Goldsmith.htm.

We could not easily adopt and implement, within the timeframe necessary to implement the fee schedule by January 1, 2001, a methodology for recognizing geographic population density disparities other than MSA/non-MSA. However, we will consider alternative methodologies that may more appropriately address payment to isolated, low-volume rural ambulance suppliers. Thus, the rural adjustment in this rule is a temporary proxy to recognize the higher costs of certain low-volume rural supplies.

In the process of evaluating the operation of the regulations developed through the negotiated rulemaking process, there are several difficult issues that will need to be resolved. Examples of such issues include: (1) Appropriately identifying an ambulance supplier as rural; (2) identifying the supplier's total ambulance volume (since Medicare only has a record of its Medicare services); and (3) identifying whether the supplier is isolated, given that some suppliers might not furnish services for Medicare (that is, Medicare would have no record of their existence) and one of these suppliers may be located near an otherwise ''isolated'' supplier. Addressing these issues in some cases will require the collection of data that is currently unavailable. We intend to work with the industry to identify and collect all pertinent data as soon as possible, and we encourage comments regarding the type and source of data that could be used for this purpose.

The application of the rural adjustment would be determined by the geographic location at which the beneficiary is placed on board the ambulance. The rural adjustment would be made using the following methodology:

- Ground—A 50 percent add-on applied to only the mileage payment rate for the first 17 loaded miles.
- Air—A 50 percent add-on applied to the base rate and to all of the loaded mileage.

5. Mileage

We are proposing to add § 414.610(c)(1) that would state that mileage would be paid separately from the base rate. The payment for mileage reflects the costs attributable to the use of the ambulance vehicle (for example, maintenance and depreciation), which increase as the vehicle's mileage increases. Based on the Committee's agreement, the mileage rate for 2001 is as follows: $5 for ground ambulance, $6 for fixed wing ambulance, and $16 for rotary wing ambulance. Payment for some mileage in rural areas is made at a higher rate and is discussed in detail later in this proposed rule.

6. Structure of the Fee Schedule for Ambulance Services

We are proposing in § 414.610(a) that the fee schedule payment for ambulance services would equal a base rate payment plus payments for mileage and applicable adjustment factors. (See Table 1 for a description of the structure of the ambulance fee schedule.)

7. Ambulance Inflation Factor

We are proposing to add § 414.615, ''Transition methodology for implementing the ambulance fee schedule,'' which would state that the ambulance fee schedule would include the ambulance inflation factor specified in section 1834(l)(3) of the Act and discussed below.

8. Phase-in Methodology

We are proposing to add § 414.615 that would provide for a 4-year transition period. (The phase-in schedule is described in section IV.)

B. Proposed Changes Not Based on Negotiated Rulemaking

We are proposing changes to certain policies that were not within the scope of the negotiated rulemaking process. These proposed changes are as follows:

1. Coverage of Ambulance Services

In § 410.40(b), we are proposing to revise the introductory language to provide a cross reference to § 414.605 for a description of the specific levels of services. We are proposing to revise paragraph § 410.40(d)(1) to state that transportation includes fixed wing and rotary wing ambulances. Also, we are proposing to revise § 410.40(d)(3) by adding two options to document medical necessity.

2. Physician Certification Requirements

On January 25, 1999, we published a final rule (64 FR 3637) that updated Medicare coverage policy concerning ambulance services. That final rule provided the documentation requirements for coverage of nonemergency ambulance services for Medicare beneficiaries. The rule requires ambulance suppliers to obtain, from the beneficiary's attending physician, a written order certifying the medical necessity of nonemergency scheduled and unscheduled ambulance transports. The final rule became effective February 24, 1999.

Our present regulations (at §§ 410.40(d)(2) and 410.40(d)(3)) set forth the requirements for scheduled and unscheduled nonemergency ambulance transports. The regulations require ambulance suppliers to obtain, from the beneficiary's attending physician, a written physician statement certifying the medical necessity of requested ambulance transports.

Section 410.40(d)(3)(i) specifies that, in cases when a beneficiary living in a facility and under the direct care of a physician requires nonemergency, unscheduled transport, the physician's certification can be obtained up to 48 hours after transport. After publication of this rule, we were made aware of instances in which ambulance suppliers, despite having provided ambulance transports, were experiencing difficulty in obtaining the necessary physician certification statements within the required 48-hour timeframe.

While we still believe that the 48-hour timeframe is the appropriate standard, we recognize that there may be instances when, not through fault of their own, it may not be possible for the ambulance suppliers to meet the requirement. Therefore, we have determined that there is a need to revise and clarify this requirement (as described in § 410.40, ''Coverage of ambulance services,'' paragraph (d)(3)).

Before submitting a claim, the ambulance supplier must obtain: (1) A signed physician certification statement from the attending physician; (2) if the ambulance supplier is unable to obtain a signed physician certification statement from the attending physician, a signed physician certification must be obtained from either the physician, physician assistant, nurse practitioner, clinical nurse specialist, registered nurse, or discharge planner who is employed by the hospital or facility where the beneficiary is being treated and who has personal knowledge of the beneficiary's condition at the time the transport is ordered or the service was furnished (the term physician certification statement will also be applicable to statements signed by other authorized individuals); or (3) if the supplier is unable to obtain the required statement as described in 1 and 2 above within 21 calendar days following the date of service, the ambulance supplier must document its attempts to obtain the physician certification statement and may then submit the claim.

Acceptable documentation must include a signed return receipt from the U.S. Postal Service or similar delivery service. A signed return receipt will serve as proof that the ambulance supplier attempted to obtain the required physician certification statement from the beneficiary's attending physician.

In all cases, the appropriate documentation must be kept on file and, upon request, presented to the carrier or intermediary. It is important to note that neither the presence nor absence of the signed physician certification statement necessarily proves (or disproves) whether the transport was medically necessary. The ambulance supplier must meet all coverage criteria in order for payment to be made.

3. Payment During the First Year

As explained below in more detail, we would use the universe of claims paid in 1998 (reduced by the $65 million savings that would have been realized through implementation of the BLS and ALS definitions proposed in the June 17, 1997 proposed rule (62 FR 32718)) to establish the CF and would index the 1998 dollars to 2001 dollars using the compounded inflation factors provided by section 1834(l)(3) of the Act. (The transition and the inflation factors are described in proposed § 414.615.)

4. Billing Method

In § 414.610, we would state that after the transition period, we would bundle into the base rate payment all items and services furnished within the ambulance service benefit. This would eliminate billing on an itemized basis for any items and services related to the ambulance service (for example, oxygen, drugs, extra attendants, and EKG testing). In addition, only the base rate code and the mileage code would be used to bill Medicare. (This decision was made, in accordance with section 1834(l)(7) of the Act, which gives us the authority to specify a uniform coding system.) During the transition period, suppliers who currently use billing methods 3 or 4 may continue to bill for supplies separately.

5. Local or State Ordinances

In § 414.610, we would state that, regardless of any local or State ordinances that contain provisions on ambulance staffing or furnishing of all ambulance services by ALS suppliers, we would pay the appropriate ambulance fee schedule rate for the services that are actually required by the condition of the beneficiary. This policy derives from the Medicare statutory requirement (see section 1834 (1)(2)(C) of the Act) to link payments to the types of services furnished.

6. Mandatory Assignment

In § 414.610, we would state that effective January 1, 2001, all payments for ambulance services must be made on an assignment-related basis. Ambulance suppliers must accept the Medicare allowed charge as payment in full and not bill the beneficiary any amount other than unmet Part B deductible or coinsurance amounts. There is no transitional period for mandatory assignment.

7. Miscellaneous Payment Policies

Although not included in the proposed regulations, we are clarifying the following payment policies.

a. Multiple patients—Occasionally, an ambulance will transport more than one patient at a time. (For example, this may happen at the scene of a traffic accident.) In this case, we propose to prorate the payment as determined by the ambulance fee schedule among all of the patients in the ambulance. For example, if two patients were transported at one time, and one was a Medicare beneficiary and the other was not, we would make payment based on one-half of the ambulance fee schedule amount for the level of medically appropriate service furnished to the Medicare patient. The Medicare Part B coinsurance, deductible, and assignment rules would apply to this prorated payment.

Similarly, if both patients were Medicare beneficiaries, payment for each beneficiary would be made based on half of the ambulance fee schedule amount for the level of medically appropriate services furnished to each patient. The Medicare Part B coinsurance, deductible, and assignment rules would apply to these prorated amounts.

b. Pronouncement of death—There are three rules that apply to ambulance services and the pronouncement of death. First, if the beneficiary was pronounced dead by an individual who is licensed to pronounce death in that State prior to the time that the ambulance is called, no payment would be made. Second, if the beneficiary is pronounced dead after the ambulance is called but before the ambulance arrives at the scene, payment for an ambulance trip would be made at the BLS rate, but no mileage would be paid. Third, if the beneficiary is pronounced dead after being loaded into the ambulance, payment would be made following the usual rules (that is, the same level of payment would be made as if the beneficiary had not died).

c. Multiple Arrivals—When multiple units respond to a call for services, we would pay the entity that provides the transportation for the beneficiary. The transporting entity would bill for all services furnished, as stated in current policy. For example, if BLS and ALS entities respond to a call and the BLS entity furnishes the transportation after an ALS assessment is furnished, the BLS entity would bill using the ALS1 rate. We would pay the BLS entity at the ALS1 rate. The BLS entity and the ALS entity would have to negotiate payment for the ALS assessment.

d. BLS Services in an ALS Vehicle—Effective January 1, 2001, claims will be paid at the BLS level where an ALS vehicle was used but no ALS level of service was furnished. Claims must be filed using the appropriate BLS code. There is no transitional period for claims paid at the BLS level for non-ALS services rendered in an ALS vehicle.

III. Methodology for Determining the Conversion Factor

Our approach to determining the CF would be to: (1) Use the most recent complete year of ambulance claims; (2) translate those claims into the format that would have been used under the fee schedule; and (3) calculate the CF to be applied to the RVUs of the different levels of service that would result in the same total program payment for those claims less $65 million. We would then inflate this CF in accordance with the inflation factor prescribed in the statute. (See section 1834(1)(3) of the Act.) We used 1998 as the base year because this was the most recent complete year for which claims data were available. For claims processed by carriers (that is, claims from independent ambulance suppliers), we used allowed charges. For claims processed by fiscal intermediaries (FIs) from provider-based ambulance services, we used the submitted charges on the Medicare claims multiplied by the cost-to-charge ratio applicable to the ambulance costs for that provider.

We decided that choosing the most common number of miles on existing claims would be the best estimate as to those claims that did not report mileage. The research indicated that the mode for urban claims was 1, and the mode for rural claims was also 1.

We modified the claims data in several ways to calculate the proposed fee schedule and its impact. First, we separated all claims into two groups:

- Carrier processed claims for ambulance services (8 million in 1998).

• FI processed claims for ambulance services (900,000 in 1998).

A. Carrier Processed Claims

Not all of the 1998 claims were directly usable for purposes of the proposed ambulance fee schedule. Some of the claims did not show mileage and, because mileage would be required for each ambulance service under the fee schedule, an adjustment had to be made for the missing miles. In other cases, the billing codes under the old system did not translate directly into services that would be paid under the proposed fee schedule. Below is a more detailed explanation of the adjustments that were made to the 1998 base year data in order to accommodate missing data.

1. Mileage

Approximately 1.1 million claims for ground ambulance services did not show any mileage. The proposed fee schedule for ambulance services would provide a payment for the trip and a payment per statute mile for the loaded mileage traveled. Therefore, in calculating the proposed CF, we added mileage to those claims that did not report mileage. We did so by assigning the mode value (that is, the number of miles billed most often) per trip in urban areas (1.0 miles) and the mode value or mileage per trip in rural areas (1.0 miles).

Current billing instructions provide that only one ambulance trip may be billed per line on a claim. Therefore, we did not count multiple trips billed on the same line of a claim. This reduced the total trip count processed by carriers by approximately 1 percent. Billing rules prohibit more than one trip to be reported on a line; therefore, we assumed any number greater than one was an error. Because the allowed charges on these claims represented the amounts paid, there was a corresponding increase by the same percentage of the average charge per trip.

2. Billing Codes

We determined that the billing codes that represent items and services included under the ambulance fee schedule are all billing codes submitted by ambulance suppliers in the range of HCFA Common Procedure Coding System (HCPCS) A0030 through A0999 (excluding HCPCS code A0888, which is not covered by Medicare) and Common Procedural Terminology–4 (CPT–4) [1] codes 93005 and 93041. HCPCS billing codes A0030 through A0999 represent ambulance services, supplies, and equipment that are covered by the ambulance fee schedule, and CPT codes 93005 and 93041 represent electrocardiogram (EKG) services that may be billed by ambulance suppliers. In addition, we included all HCPCS billing codes in the range of A4000 through Z9999; these services may only be paid by a carrier to an ambulance supplier if they represent items and services covered under the Medicare ambulance benefit. We excluded all other CPT billing codes in the range of 00001 through 99999 (except the two EKG codes listed above) because they represent services not covered by the ambulance fee schedule.

Next, we adjusted all billing codes that represented an ALS vehicle when no ALS service was furnished. We removed the actual allowed charges on these claims and replaced them with the charges that would have been allowed by the carrier for the corresponding BLS level of service (that is, emergency for emergency and nonemergency for nonemergency). As described in this preamble, this adjustment reduced the Medicare portion of the total allowed charges for ambulance services by $65 million.

3. Crosswalking the Old Billing Codes to the New Billing Codes

We converted the old billing codes in the base year data to the new billing codes as they would be under the proposed fee schedule. The old BLS codes convert directly to the proposed BLS codes. The old air ambulance codes (fixed wing and helicopter) convert to the proposed air ambulance codes. The old water ambulance code converts to the proposed BLS–Emergency code. The old mileage codes distinguished ALS miles from BLS miles; both of these old codes would convert to the single proposed mileage code. Codes used to report air mileage would convert to the proposed codes for fixed and rotary wing mileage respectively. All air miles would be reported in statute miles. As mentioned earlier, we converted the codes for an ALS vehicle when no ALS services were furnished to the corresponding BLS codes. The conversion of the remaining old ALS codes (for example, when ALS services were furnished) to proposed ALS codes is less straightforward because there are more levels of ALS service under the proposed fee schedule than currently exist. All nonemergency ALS codes convert to the proposed ALS1 (nonemergency) code. Based on advice from various negotiating committee members, we propose converting the old emergency ALS codes according to the following formulas:

• For claims on which both the origin and destination was a hospital: 33 percent would convert to specialty care transport (SCT), 5 percent to advanced life support, level two (ALS2), and the remainder to ALS1—Emergency.

• For all other claims: 8.3 percent would convert to ALS2, and the remainder to ALS1—Emergency.

B. FI Processed Claims

Since all FI claims contained mileage, we did not make any adjustment for mileage. We determined the codes that represented items and services included under the ambulance fee schedule. In the case of hospital-based claims, the same claim is used to report services furnished in the emergency room and other outpatient departments of the hospital as is used to report the ambulance service. Therefore, it is impossible to know exactly where any of the nonambulance services were furnished. Because most of these nonambulance services were of the kind that would likely have been furnished in the hospital's emergency room, we did not include them in data for the proposed ambulance fee schedule. Therefore, we determined the billing codes that would be covered by the ambulance fee schedule were all billing codes representing ambulance services (for example, in the range of HCPCS codes A0030 through A0999 (excluding HCPCS code A0888, which is not covered by Medicare)) submitted by hospitals.

Codes that represented the use of an ALS vehicle, but when no ALS level of service was furnished, were converted to the corresponding BLS BILLING CODE. However, in this case, no adjustment was made for payment because payment for these claims would have been corrected to the proper amount at cost settlement.

C. Air Ambulance

To establish a consistent system of RVUs that could be applied to ground and air ambulance services, we would have been required to know the cost per service in each setting. Unfortunately, these data do not exist. The air ambulance representative to the Committee presented data and stated that the data, when combined with an analysis by an economist, demonstrated that the total costs in 1998 for air ambulance services were between a minimum of $134.8 million and a maximum of $168 million. This amount exceeded the billed charges for air ambulance services. The representative also stated that RVUs should be based

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on cost and that there were no verifiable cost data on the ground ambulance services side against which to compare the cost of air ambulance services. In addition, other Committee members were unsure of the accuracy of the air ambulance services cost data, stating that the air ambulance services costs were not based on an audited statistical sample and that the data had not been subject to independent scrutiny. Based on recommendations from the Committee, we would set the amount of the base year expenditures to be used in determining the payment levels for air ambulance services between $134.8 million and $158 million.

We considered several approaches in an attempt to accurately estimate the appropriate amount for air ambulance services within the range prescribed by the Committee.

We considered using cost data from a ground ambulance services survey acquired by an independent source that was hired by a member of the Committee. We tried to compare the results of this survey to cost data from our estimate. Because the study was only a self-reporting survey and did not report audited costs and because the results varied widely and were substantially different from our estimate, we could not establish a consistent relationship between the survey that resulted in any estimates within the range prescribed by the Committee.

We converted old billing codes to the proposed billing codes in the same way as discussed above for the carrier-rocessed claims. Using the billed charge adjusted by the supplier's cost-to-charge ratio, we are able to estimate the supplier's Medicare–allowable cost for all ambulance services. However, we are unable to estimate with any certainty the split of air ambulance services costs and ground ambulance services costs from the same supplier. This is because the Medicare cost–apportioning rules do not furnish data in this detail. Originally, we assumed that the same cost-to-charge ratio applies to both air and ground ambulance services charges. However, because this assumption may not be correct and because it results in an amount below the range specified by the Committee, we did not pursue this methodology.

Next, we considered using the billed charges for ambulance services. Over 80 percent of ground ambulance services are furnished by independent (not provider-based) ambulance services suppliers. However, the average adjusted charge (that is, the charge adjusted by the provider's cost-to-charge ratio) for ALS and basic life support (BLS) ground ambulance services, excluding mileage, furnished by provider-based ambulance services is more than 60 percent greater than the average charge for independent ambulance services suppliers ($342 vs. $206 per trip). Assuming the appropriate payment for ground ambulance services is the average allowed charge for the independent suppliers, the amount of money misallocated to provider-based ground ambulance services substantially exceeds the amount that would result in a total payment for air ambulance services at the maximum authorized by the Committee ($158 million). Considering this large discrepancy between the payment rates for provider-based and independent supplier ground ambulance services and the fact that suppliers are able to furnish services at the lower rate, we believe that the appropriate payment for ground ambulance services is closer to the independent supplier charge. Consequently, we have chosen the maximum air ambulance total amount designated by the Committee, that is, $158 million.

D. Calculation of the CF

Following this process, we determined the total number of ambulance trips and loaded miles and the total amount of charges allowed by Medicare for ambulance services in the base year of 1998 (less the adjustment for those cases where an ALS vehicle was used, but no ALS services were furnished, described above). To calculate the CF for ground ambulance services, we followed these steps—

- Multiplied the volume of services for each level of ground ambulance service by the respective RVUs recommended by the Committee (including application of the practice expense of the GPCI and rural payment rate as described above);
- Summed those products to arrive at the total number of RVUs;
- Subtracted the total allowed amount for air ambulance services ($158 million as discussed above) from the total charges allowed by Medicare for ambulance services, which results in the total amount of charges allowed by Medicare for ground ambulance services;
- Subtracted the total amount of RVUs for ground mileage from this total charge amount;
- Divided the remaining charge amount by the total number of RVUs for ground services and applied the ambulance inflation factor for 2001, which results in a CF for ground ambulance trips of $157.52.

We would follow a similar procedure to determine the fee schedule amount for air ambulance services. Because there are only two kinds of air ambulance—fixed wing and rotary—we would not calculate RVUs and a CF, but would calculate the actual fee schedule amounts directly. Namely, we divided the total number of billed air ambulance services into the total amount of payment available for these services ($158 million). The amounts in the base year (1998) are $2,115.00 and $2,459.00 for fixed wing and rotary trips, respectively. Then these numbers would also be inflated by the inflation factor provided in section 1834(l) of the Act. (Additional information regarding the inflation factor is discussed below.)

We would monitor payment data and evaluate whether projections used to establish the original CF (for example, the ratio of the volume of BLS services to ALS services) is accurate. If the actual proportions among the different levels of service are different from the projected amounts, we would adjust the conversion factor accordingly and apply this adjusted conversion factor prospectively.

IV. Implementation Methodology

Currently, payment of ambulance services follows one of two methodologies, depending on the type of ambulance biller. Claims from ambulance service suppliers are paid based on a reasonable charge methodology, whereas claims from providers are paid based on the provider's interim rate (which is a percentage based on the provider's historical cost-to-charge ratio multiplied by the submitted charge) and then cost-settled at the end of the provider's fiscal year.

The proposed ambulance fee schedule would be phased in over a 4-year period. The transition would begin on January 1, 2001 and the fee schedule would be phased in on a CY basis. Therefore, for dates of service (DOS) beginning January 1, 2001, suppliers/providers would be paid based on 80 percent of the respective current payment allowance (as described in Program Memorandum AB–99–73) applicable to 2001 plus 20 percent of the ambulance fee schedule amount. (See § 414.615 for additional information.)

Based on the Committee's consensus recommendation, we would implement the ambulance fee schedule as follows:

	Former payment percentage	Fee schedule percentage
Year One (CY 2001)	80	20
Year Two (CY 2002)	50	50
Year Three (CY 2003)	20	80
Year Four (CY 2004)	0	100

A. Revisions and Additions to HCPCS Codes

Claims would be processed using the proposed billing codes created for the ambulance fee schedule. From these proposed codes, the amount for the portion of the payment based on the current system (80 percent in 2001) would be derived using the HCPCS crosswalks as shown below.

We would change current ambulance HCPCS codes in order to implement the ambulance fee schedule. The proposed HCPCS codes would have to be effective January 1, 2001. The existing HCPCS codes are not billable effective January 1, 2001, except for those HCPCS codes related to items and services for which a Method 3 or Method 4 biller may bill for supplies separately during the transition period.

National HCPCS codes and descriptions of services created for ambulance services were presented to the HCFA Alpha-Numeric group. The following chart shows how the existing codes would crosswalk to the proposed new codes under the ambulance fee schedule. We would establish the codes before implementation of the ambulance fee schedule on January 1, 2001. Additionally, the chart shows current HCPCS codes that would not have a corresponding code under the proposed ambulance fee schedule. The items and services represented by these codes would be bundled into the base rate services.

Codes Not Valid Under the New Fee Schedule (Codes Terminate Effective 01/01/04):

A0382, A0384, A0392, A0396, A0398, A0420, A0422, A0424, A0999

HCPCS CODE CHANGES

Current HCPCS Code(s)	New HCPCS Code	Descriptions of proposed new codes
A0380, A0390	A0425	Ground mileage (per statute mile).
A0306, A0326, A0346, A0366.	A0426	Ambulance service, advanced life support, non-emergency transport, level 1 (ALS1).
A0310, A0330, A0350, A0370.	A0427	Ambulance service, advanced life support, emergency transport, level 1 (ALS1-Emergency).
A0300, A0304, A0320, A0324, A0340, A0344, A0360, A0364.	A0428	Ambulance service, basic life support, non-emergency transport (BLS).
A0050, A0302, A0308, A0322, A0328, A0342, A0348, A0362, A0368.	A0429	Ambulance service, basic life support, emergency transport (BLS-Emergency).
A0030	A0430	Ambulance service, conventional air services, transport, one way (fixed wing).
A0040	A0431	Ambulance service, conventional air services, transport, one way (rotary nwing).
Q0186	A0432	Paramedic ALS intercept (PI), rural area, transport furnished by a volunteer ambulance company which is prohibited by state law from billing third party payers.
	A0433	Advanced life support, Level 2 (ALS2). The administration of at least three different medications and/or the provision of one or more of the following ALS procedures: Manual defibrillation/cardioversion, endotracheal intubation, central venous line, cardiac pacing, chest decompression, surgical airway, intraosseous line.
	A0435	Air mileage; fixed wing (per statute mile).
	A0436	Air mileage; rotary wing (per statute mile).
	A0434	Specialty Care Transport (SCT). In a critically injured or ill patient, a level of interfacility service provided beyond the scope of the Paramedic. This service is necessary when a patient's condition requires ongoing care that must be provided by one or more health professionals in an appropriate specialty area (for example, nursing, emergency medicine, respiratory care, cardiovascular care, or a paramedic with additional training).

New suppliers that have not billed Medicare in the past would be subject to the transition period rules. They would be assigned an allowed charge under the current reasonable charge rules (50th percentile charges) and would follow the same blended transition payments as other ambulance suppliers. In all cases, the resulting transitional payment would be subject to the Part B coinsurance and deductible requirements.

Currently, provider claims are paid based on the provider's interim rate (the provider's submitted charge multiplied by the provider's past year's cost to charge ratio) which is cost settled at the end of the provider's fiscal year and limited by the statutory inflation factor applied to the provider's cost per ambulance trip. The fee schedule transition would begin on January 1, 2001 and would phase in the fee schedule on a CY basis. Therefore, for providers that file cost reports on other than a CY basis, for cost reporting periods beginning after January 1, 2001, two different blended rates would apply. Effective for services furnished during CY 2001, the proposed blended amount for provider claims would equal the sum of 80 percent of the current payment system amount and 20 percent of the ambulance fee schedule amount. The intent of our implementing payment under the fee schedule at only 20 percent in the first year is to give ambulance providers a period of time to adjust to the new payment amounts, because some providers may receive substantially lower payments that at present. For DOS in CY 2002, the blended amount would equal the sum of 50 percent of the current payment system amount and 50 percent of the ambulance fee schedule amount. For DOS in CY 2003, the blended amount would equal the sum of 20 percent of the current payment system amount and 80 percent of the ambulance fee schedule amount. For DOS in CY 2004 and beyond, the payment amount would equal the ambulance fee schedule amount. The program's payment in all cases would be subject to the Part B coinsurance and deductible requirements.

To assure that the providers receive the correct payment amount during the transition period, all submitted charges attributable to ambulance services furnished during a cost-reporting period would be aggregated and treated separately from the submitted charges attributable to all other services furnished in the hospital. Also, the necessary statistics would be maintained for the provider's Provider Statistics and Reimbursement report; this would ensure that the ambulance fee schedule portion of the blended transition payment would not be cost settled at cost settlement time.

New providers would not have a cost per trip from the prior year. Therefore, there would be no cost per trip inflation limit applied to new providers in their first year of furnishing ambulance services.

New suppliers would use the customary charge established for new suppliers in accordance with standard program procedures from the year 2000, adjusted for each year of the transition period by the ambulance inflation factor that we published.

Section 1834(1) of the Act also requires that all payments made for ambulance services under the proposed fee schedule be made on an assignment-related basis. As stated in section 1842(b)(18) of the Act, referenced in section 1834(l)(6), ambulance suppliers would have to accept the Medicare allowed charge as payment in full and not bill or collect from the beneficiary any amount other than the unmet Part B deductible and Part B coinsurance amounts. Violations of this requirement may subject the supplier to sanctions. The law provides that mandatory assignment provisions apply as soon as payment is made under the fee schedule; therefore, there would be no transitional period for mandatory assignment of claims. Also, the rule that claims would be paid at the BLS level if an ALS vehicle was used but no ALS level of service was furnished would be effective on January 1, 2001 and would not be subject to transition. These claims would have to be filed using the appropriate BLS code.

V. Mechanisms To Control Expenditures for Ambulance Services

A. Number of Services

We do not anticipate that the number of ambulance services furnished will increase to offset the effects of lower payments per service. Therefore, the Committee has not suggested mechanisms to control expenditures. However, we will monitor payment data and evaluate whether projections used to set the original CF (for example, the ratio of the volume of BLS services to ALS services) are accurate. If the actual proportions of the various levels of service are different (too high or too low) from the projected ones, we will adjust the CF accordingly.

B. Low Billers

A concern was raised about low billers of ambulance services. Low billers are suppliers who currently bill less than the maximum charge allowed by Medicare. There are several reasons low billers exist. For example, low billers may be municipal or volunteer suppliers of services, regulated by local ordinances, limited by an inflation-indexed charge that is part of the Medicare program's current reasonable charge policy, or restricted for other reasons.

Because the total ambulance service payment amount is based on the actual allowed charges from the base year (1998), the CF will reflect the lower than maximum charges. At the same time, if low billers of ambulance services continue to charge less than the ambulance fee schedule amount, we will pay less than if all suppliers charged the ambulance fee schedule amount. Therefore, some members of the ambulance industry have urged us to increase the fee schedule CF anticipating that otherwise savings would result from billers who continue to charge less than the fee schedule amount. We have estimated that in the base year 1998 the difference between actual charges and the maximum charges allowed by Medicare is approximately $150 million. Approximately half of this amount is attributable to charges that are 70 percent of the maximum allowed charges or greater. Assuming that a low biller is someone whose charge is less than 70 percent of the maximum allowed charge, approximately $75 million can be attributed to low billing.

We have neither a means to estimate the extent to which low billing will continue after the fee schedule is implemented and the inflation-indexed charge limit no longer applies, nor a means to estimate the extent to which volunteer and municipal ambulances will choose not to file Medicare claims at the fee schedule amounts to which they could be entitled. The Congress has provided that ''the amounts paid shall be 80 percent of the lesser of the actual charge for the services or the amount determined by a fee schedule * * *'' (section 1833(a)(1)(R) of the Act). Moreover, the Congress did not require that payment under the ambulance fee schedule be budget neutral to the current reasonable charge system, but rather specified only that the aggregate amount of payments for ambulance services not exceed the amount that would have been paid absent the fee schedule.

Given the law and the uncertainty of suppliers' future behavior, we propose not to attempt to adjust the CF on the assumption that low billing will or will not continue. However, as mentioned above, we will monitor payment and billing data and recalculate the CF as appropriate.

VI. Adjustments to Account for Inflation and Other Factors

In setting the CF for 2001, we would adjust the base year data from 1998 for inflation. Section 4531 of the Balanced Budget Act of 1997 prescribes the inflation factor to be used in determining the payment allowances for ambulance services paid under Medicare under the current payment system. The inflation factor is equal to the projected consumer price index for all urban consumers (U.S. city average) (CPI–U) minus 1 percentage point from March-to-March for claims paid under cost reimbursement (providers) and from June-to-June for claims paid under reasonable charges (carrier processed claims). The base year for our data is 1998. The inflation factors in percent are:

	March-to-March (provider claims)	June-to-June (carrier claims)
1999/1998	0.9	1.1
2000/1999	2.4	2.0
2001/2000	1.3	1.4
Compounded inflation factor (in percent)	4.665	4.566

We would use the most recently available estimate of inflation from 2000 to 2001 at the time of the writing of the final rule.

In addition, the Committee acknowledged that the statutory provisions in section 1834(l)(3)(B) of the Act, regarding annual updates to the fee schedule, would be used to make adjustments to account for inflation. That section of the Act provides for an annual update to the ambulance fee schedule based on the percentage increase in the CPI-U for the 12-month period ending with June of the previous year. For 2001 and 2002, the increase in the CPI-U is reduced by 1.0 percentage point for each year.

We would monitor payment data and evaluate whether projections used to establish the original CF (for example,

the ratio of the volume of BLS services to ALS services) is accurate. If the actual proportions among the different levels of service are different from the projected amounts, we would adjust the CF accordingly.

VII. Medical Conditions Lists

When the Congress mandated that the ambulance fee schedule be developed through the negotiated rulemaking process, we deferred final action on our proposal to base Medicare payment on the level of ambulance service required to treat the beneficiary's condition. That proposal would have used International Classification of Diseases, 9th revision, Clinical Modification (ICD–9–CM) diagnostic codes that would have described the nature of the beneficiary's medical condition. Use of the ICD–9–CM codes would also have assisted ambulance suppliers to bill the medically necessary level of ambulance service.

While we are not establishing a formal proposal in this proposed rule, as a first step, we reopened the discussion of developing a medical condition listing during the negotiated rulemaking process. The goal of the discussion was to develop a list of medical conditions, not diagnoses, that generally require ambulance services and the appropriate level of care. The identified condition(s) would describe the beneficiary's medical condition that would necessitate the ambulance services.

The medical conditions listed in Addendum A of this proposed rule would enable the ambulance supplier to identify the level of service at which a claim may be paid. The list identifies nonemergency conditions; emergency medical conditions—traumatic and nontraumatic; and emergency and nonemergency conditions that warrant interfacility transport services. This listing would also aid Medicare contractors in their efforts to assure that claims for ambulance services are paid appropriately and that providers and suppliers of ambulance services are educated as to the documentation that would best support a claim. Use of an identified condition, however, would not make the claim payable if the beneficiary could have been served by other means. We recognize that unusual circumstances exist that warrant the use of ambulance services. In these circumstances, the publication of the list would not preclude the contractor from accepting other relevant medical information (for example, ICD–10–CM codes or other relevant on-the-scene information) to describe a medical condition that is not included on the list. Therefore, the medical condition list is not all-inclusive.

Since the negotiated rulemaking committee concluded its work, we have received positive feedback on the medical conditions list in Addendum A. While we maintain the final decision-making authority regarding required use of the above referenced medical condition list or a similar type of list, we are soliciting information from interested parties on the need for such a listing and the development of codes used in association with such a list that would best support the processing of claims.

VIII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

Section 410.40 Coverage of Ambulance Services.

(d)(3)(iii) If the ambulance supplier is unable to obtain the signed physician certification statement from the beneficiary's attending physician, a signed physician certification statement must be obtained from either the physician, physician assistant (PA), nurse practitioner (NP), clinical nurse specialist (CNS), registered nurse (RN), or discharge planner, who is employed by the hospital or facility where the beneficiary is being treated, and who has personal knowledge of the beneficiary's condition at the time the ambulance transport is ordered or the ambulance service was furnished.

The burden associated with this requirement is the time and effort necessary for the required hospital employee to provide the certification. We estimate that, there will be 5,000 certifications on an annual basis at an estimated 5 minutes per certification. Therefore, the annual national burden associated with this requirement is 417 hours.

(d)(3)(iv) If the ambulance supplier is unable to obtain the required physician certification statement within 21 calendar days following the date of the service, the ambulance supplier must document its attempts to obtain the requested physician certification statement and may then submit the claim. Acceptable documentation must include a signed return receipt from a U.S. Postal Service or other similar service. This documentation will serve as proof that the ambulance supplier attempted to obtain the required signature from the attending physician.

The burden associated with this requirement is the time and effort necessary for the ambulance supplier to document its attempts to obtain the requested physician certification statement. We estimate that 5,000 providers will be required to submit a receipt instead of certification for an average of 12 instances on an annual basis, at an estimated 5 minutes per instance. Therefore, the annual national burden associated with this requirement is 5,000 hours.

Section 414.610 Basis of Payment.

(d) The zip code of the point of pick-up must be reported on each claim for ambulance services, so that the correct GAF and RAF may be applied, as appropriate.

The burden associated with this requirement is the time and effort necessary for the ambulance supplier to note the required zip code for each claim of service. We estimate that of the 9,000 (potential) providers, 5000 providers will be required to provide the documentation, for an estimated 550,000 (5% of total claims volume of 11M) instances on an annual basis. Per provider (5,000), we estimate 1 minute per instance to meet this requirement, for a burden of 2 hours per provider on an annual basis. Therefore, the annual national burden associated with this requirement is 10,000 hours.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Attn: John Burke, Room N2–14–26,7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

IX. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). We have determined that this is not a major rule. It would result in spending for the first year at approximately $67.6 million less than would have been paid if the fee schedule were not implemented. The total impact would be $84.5 million in reduced revenue for ambulance providers and suppliers ($67.6 million plus $16.9 million in reduced Part B coinsurance). In addition, approximately $19 million in total revenue (due to Medicare Part B coinsurance and deductible requirements of approximately 80 percent that would be program expenditures) would be redistributed among entities that furnish ambulance services according to the data presented in this section.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. For purposes of the RFA, most ambulance providers and most ambulance suppliers are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. In the aggregate, in 2001, $17 million in total revenue would be redistributed from urban to rural entities. It is also true that some rural entities would be paid less than their current rate. While we do not have specific data on the number of small rural hospitals that furnish ambulance services, we recognize that the rural adjustment factor incorporated in this proposal may not completely offset the higher costs of low-volume suppliers. As stated earlier, we recognize that this rural adjustment is a temporary proxy to acknowledge the higher costs of certain low-volume isolated and essential suppliers. We will consider alternative methodologies that would more appropriately address payment to isolated, low-volume rural ambulance suppliers. Therefore, we solicit public comment on the number, location, and characteristics of the rural entities that are affected by this proposal.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. The proposed rule would not have any unfunded mandates.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. The proposed rule would not impose compliance costs on the governments mentioned.

Although we view the anticipated results of this proposed regulation as beneficial to the Medicare program and to Medicare beneficiaries, we recognize that not all of the potential effects of this proposed rule can be anticipated.

The foregoing analysis concludes that this regulation may have a financial impact on a number of small entities. This analysis, in combination with the rest of the preamble, is consistent with the standards for analysis set forth by the RFA.

B. Anticipated Effects

1. Effect on Ambulance Providers and Suppliers

Section 1834(l)(3)(A) of the Act requires that the aggregate amount paid under the ambulance fee schedule not exceed the aggregate amount that would have been paid absent the fee schedule. One of the characteristics of the present payment system is that widely varying amounts are paid for the same type of service depending upon the location of the service. In effect, the proposed ambulance fee schedule would lower payments in areas of high current levels of payment and raise payments in areas of low current levels of payment. When examining the impact of the proposed ambulance fee schedule, a given area could have a large reduction in payment only because such an area had historically been paid at a rate higher than average for the type of service. Also, as previously described, we are taking into account a $67.6 million program savings that would have resulted from a coverage change that was proposed in 1997. Implementation of that proposed rule was delayed until the ambulance fee schedule was established.

Implementation of the proposed ambulance fee schedule would have several general effects. One effect would be that in 2001, $19 million in total revenue would be redistributed from providers to ambulance suppliers because providers have been paid, on average, more for the same service furnished by a supplier.

2. Effects on Urban, Rural, and Air Ambulance Services

Payment could be redistributed from urban ambulance services to rural ambulance services for two reasons: (1) urban ambulance services have been paid, on average, more than for the same services furnished in rural areas; and (2) the proposed ambulance fee schedule would pay more for the same services furnished in a rural area because of the rural adjustment factor (RAF). Payment would also be redistributed from urban air ambulance services to rural air ambulance services because of the RAF for air services. Finally, there would be a redistribution of payment from ground ambulance services to air ambulance services. This effect is explained in greater detail in the discussion of the CF.

Currently, providers are paid on average 66 percent more than independent suppliers for the same type of ambulance service. This is because providers are currently paid based on reasonable cost and suppliers are paid based on reasonable charges capped by the inflation indexed charge (IIC). The IIC has limited the growth of suppliers' payments over the years, whereas, until enactment of the BBA in 1997, there had not been a limit on the growth of providers' reimbursable cost for ambulance services.

There are offsetting factors that affect payment in urban versus rural areas. While payment rates in rural areas would generally be lowered by the proposed GPCI (since the GPCI is generally lower in rural areas than it is in urban areas), rural payment rates would increase because of the rural mileage add-on. As a result, in 2001, $17 million in total revenue would be redistributed from providers and suppliers in urban areas to providers and suppliers in rural areas.

Furthermore, in 2001, $7 million in total revenue would be redistributed from providers and suppliers of ground ambulance services to providers and suppliers of air ambulance services.

The following chart summarizes these findings for 2001:

From	To	Revenue
Providers	Suppliers	$19 million.
Urban	Rural	$17 million.
Ground	Air	$7 million.

These amounts represent total revenue, that is, the 80 percent Medicare portion plus the 20 percent beneficiary coinsurance liability.

3. Effect on the Medicare Program

We estimate that the proposed rule would produce a calendar year net savings to the Medicare program of $67.6 million because of the delayed implementation of the coverage policy proposed in the June 17, 1997 rule. The following chart shows the estimated fiscal year annual savings that the Medicare program would realize over the next 5 years as a result of our proposal to implement the policy proposed in 1997 of paying for an ALS ambulance vehicle at the BLS payment rate when no ALS service is furnished to the beneficiary. This change would be implemented as part of the ambulance fee schedule.

Fiscal year	Savings ($ Million)
2001	40
2002	70
2003	70
2004	70
2005	80

Under this proposed rule, we anticipate savings for beneficiaries in terms of reduced coinsurance and savings due to mandatory assignment of benefits.

The table below represents the proposed fee schedule amounts for CY 2001 under this rule:

TABLE 1.—2001 FEE SCHEDULE FOR PAYMENT OF AMBULANCE SERVICES

Service level	RVUs	CF	Unadjusted base rate (UBR)†	Amount adjusted by GPCI (70% of UBR)	Amount not adjusted (30% of URB)	Loaded mileage	Rural ground mileage*
BLS	1.00	157.52	$157.52	$110.26	$47.26	$5.00	$7.50
BLS—Emergency	1.60	157.52	252.03	176.42	75.61	5.00	7.50
ALS1	1.20	157.52	189.02	132.31	56.71	5.00	7.50
ALS1—Emergency	1.90	157.52	299.29	209.50	89.79	5.00	7.50
ALS2	2.75	157.52	433.18	303.23	129.95	5.00	7.50
SCT	3.25	157.52	511.94	358.36	153.58	5.00	7.50
PI	1.75	157.52	275.66	192.96	82.70	(1) No Mileage Rate	

Service Level	Unadjusted base rate (UBR)†	Amount adjusted by GPCI (50% of UBR)	Amount not adjusted (50% of UBR)	Loaded mileage	Rural Air mileage**	Rural air base rate***
FW	$2,213.00	$1,106.50	$1,106.50	$6.00	$9.00	$3,319.50
RW	2,573.00	1,286.50	1,286.50	16.00	24.00	3,859.50

* A 50 percent add-on to the mileage rate (that is, a rate of $7.50 per mile) for each of the first 17 miles identified as rural. The regular mileage allowance applies for every mile over 17 miles.

** A 50 percent add-on to the air mileage rate is applied to every mile identified as rural.

*** A 50 percent add-on to the air base rate is applied to air trips identified as rural.

The payment rate for rural air ambulance (rural air mileage rate and rural air base rate) is 50 percent more than the corresponding payment rate for urban services (that is, the sum of the base rate adjusted by the geographic adjustment factor and the mileage).

† This column illustrates the payment rates without adjustment by the GPCI. The conversion factor (CF) has been inflated for 2001.

Legend for Table 1

ALS1—Advanced Life Support, Level 1
ALS2—Advanced Life Support, Level 2
BLS—Basic Life Support
CF—Conversion Factor
FW—Fixed Wing
GPCI—Practice Expense Portion of the Geographic Practice Cost x from the Physician Fee Schedule
PI—Paramedic ALS intercept
RVUs—Relative Value Units
RW—Rotary Wing
SCT—Specialty Care Transport
UBR—Unadjusted Base Rate

Formulas—The amounts in the above chart are used in the following formulas to determine the fee schedule payments—

Ground:

Ground—Urban:
Payment Rate=[(RVU*(0.3+(0.7*GPCI)))*CF]+[MGR*#MILES]

Ground—Rural:
Payment Rate=[(RVU*(0.3+(0.7*GPCI)))*CF]+[(((1+RG)*MGR)*#MILES≤17)+(MGR*#MILES≤17)]

Air:

Air—Urban:
Payment Rate = [(((RVU*0.5)+((RVU*0.5)*GPCI))*CF)]+[MAR*#MILES]

Air-Rural:
Payment Rate = [(1+RA)*(((RVU*0.5)+((RVU*0.5)*GPCI))*CF)]+[(1+RA)*(MAR*#MILES)]

Legend for Formulas

Symbol and Meaning
≤ less than or equal to.
> greater than.
* multiply.
CF conversion factor (ground = $157.52; air = 1.0).

GPCI practice expense portion of the geographic practice cost index from the physician fee schedule.
#MILES number of miles the beneficiary was transported.
MGR mileage ground rate (5.0).
MAR mileage air rate (fixed wing rate = 6.0, helicopter rate = 16.0).
RA rural air adjustment factor (0.50 on entire claim).
Rate maximum allowed rate from ambulance fee schedule.
RG rural ground adjustment factor amount (0.50 on first 17 miles).
RVUs relative value units (from chart).

Notes: The GPCI is determined by the address of the point of pickup.

Table 2

EXAMPLES: The following examples demonstrate the use of the proposed ambulance fee schedule amounts and how they would be used during the first year (2001). Examples 1 through 4 relate to independent supplier claims, and Example 5 relates to hospital based supplier claims.

Example 1: Ground Ambulance, Urban (Independent Supplier)

A Medicare beneficiary residing in Baltimore, Maryland, was transported via ground ambulance from his or her home to the nearest appropriate hospital 2 miles away. An emergency response was required, and an ALS assessment was performed. The level of service furnished would be ALS1-Emergency.

Assuming that the beneficiary was placed on board the ambulance in Baltimore, it would be an urban trip. Therefore, no rural payment rate would apply. In Baltimore, the GPCI = 1.039. The fee schedule amount would be calculated as follows—

Payment Rate = [(RVU* (0.3+ (0.7*GPCI)))*CF]+ [MGR*#MILES]
Payment Rate = [(1.9*(0.3+(0.7*1.039)))*157.52]+[5*2]
Payment Rate = [(1.9*(0.3+(.7273)))*157.52]+[10]
Payment Rate = [(1.9*(1.0273))*157.52]+[10]
Payment Rate = [(1.95187)*157.52]+[10]
Payment Rate = [307.4585624]+[10]
Payment Rate = 317.4585624
Payment Rate = $317.46 (subject to Part B deductible and coinsurance requirements)

Because 2001 would be the first year of a 4-year transition period, the ambulance fee schedule payment rate would be multiplied by 20 percent and added to 80 percent of the payment calculated by the current payment system. The payment rate for Year 2 (2002) would be calculated by multiplying the ambulance fee schedule payment rate by 50 percent and adding the result to 50 percent of the current payment system amount. The payment rate for Year 3 (2003) would be calculated by multiplying the ambulance fee schedule payment rate by 80 percent and adding the result to 20 percent of the current payment system amount. The payment rate for Year 4 (2004) would be based solely on the ambulance fee schedule.

Assuming the inflation indexed charge (IIC) in 2001, the reasonable charge rate for this service in Maryland would be $315.62 ($303.00 for HCPCS A0310, $6.31 × 2 miles for A0390). Therefore, the total allowed charge for this service during 2001 would be:

Old HCPCS Code(s) = A0310 and A0390
New HCPCS Code(s) = A0427 and A0425

Reasonable charge IIC	Reasonable new charge × 80%	Fee schedule	Fee schedule × 20%	Total allowed charge
$315.62	$252.50	$317.46	$63.49	$315.99

Assuming that the Part B deductible has been met, the program would pay 80 percent, and beneficiary's liability would be 20 percent, representing the Part B coinsurance amount:

Medicare Payment (80%)	Beneficiary Liability (20%)
$252.79	$63.20

Example 2: Ground Ambulance, Rural (Independent Supplier)

A Medicare beneficiary residing in Cottle County, Texas, was transported via ground ambulance from his or her home to the nearest appropriate facility located in Quanah, Texas. Cottle County, where the beneficiary was placed on board the ambulance, is a non-MSA and, therefore, is rural. A rural payment rate would apply. The total distance from the beneficiary's home to the facility was 36 miles. A BLS nonemergency assessment was performed. Under our proposal, the level of service would be BLS (nonemergency).

For this part of Texas, the GPCI = 0.888. The proposed ambulance fee schedule amount would be calculated as follows—

36 mile trip = 17 miles at the rural payment rate plus 19 miles at the regular rate.

Payment Rate = [(RVU* (0.3+ (0.7*GPCI)))*CF]+ [(((1+RG)*MGR)*#MILES≤17)+ (MGR*#MILES>17)]
Payment Rate = [(1.00*(0.3+ (0.7*0.888)))*157.52]+ [(((1+0.5)*5)*17)+ (5*19)]
Payment Rate = [(1.00* (0.3+0.6216))* 157.52]+ [((1.5*5)*17)+95]
Payment Rate = [(1.00*0.9216)*157.52]+[(7.5*17)+95]
Payment Rate = [0.9216*157.52]+[127.50+95]
Payment Rate = [145.170432]+[222.50]
Payment Rate = 367.670432
Payment Rate = $367.67 (subject to Part B deductible and coinsurance requirements)

Under the proposal, since 2001 would be the first year of a 4-year transition period, the ambulance fee schedule payment rate would be multiplied by 20 percent and added to 80 percent of the payment calculated by the current payment system. The payment rate for Year 2 (2002) would be calculated by multiplying the ambulance fee schedule payment rate by 50 percent and adding the result to 50 percent of the current payment system amount. The payment rate for Year 3 (2003) would be calculated by multiplying the ambulance fee schedule by 80 percent and adding the result to 20 percent of the current payment system amount. The payment rate for Year 4 (2004) would be based solely on the ambulance fee schedule.

Assuming the inflation indexed charge (IIC) in 2001, the reasonable charge rate for this service in Texas would be $292.44 ($152.76 for HCPCS A0300, $3.88 × 36 miles for A0380). Therefore, the total allowed charge for this service during 2001 under our proposal would be:

Old HCPCS Code(s) = A0300 and A0380
New HCPCS Code(s) = A0428 and A0425

Reasonable charge IIC	Reasonable new charge × 80%	Fee schedule	Fee schedule × 20%	Total allowed charge
$292.44	$233.95	$367.67	$73.53	$307.48

Assuming that the Part B deductible was met, the program would pay 80 percent, and the beneficiary's liability would be 20 percent, representing the Part B coinsurance amount:

Medicare Payment (80%)	Beneficiary Liability (20%)
$245.98	$61.50

Example 3: Air Ambulance, Urban (Independent Supplier)

A Medicare beneficiary was involved in an automobile accident along a busy interstate near Detroit, Michigan. A helicopter

transported the beneficiary to the nearest appropriate facility located within the city limits of Detroit. The total distance from the accident to the facility was 14 miles. The level of service was rotary wing.

Assuming that the patient was placed on board the air ambulance within the Detroit MSA, and because this is not a Goldsmith county, the trip would be urban. Therefore, no rural payment rate would apply. In the Detroit metropolitan area, the GPCI = 1.022. The ambulance fee schedule amount would be calculated as follows—

Payment Rate = [((UBR*0.5)+ ((UBR*0.5)* GPCI))]+ [MAR*#MILES]
Payment Rate = [((2573.00*0.5)+ ((2573.00*0.5)*1.022))]+ [16.00*14]
Payment Rate = [(1286.50+ ((1286.50)*1.022))]+ [224]
Payment Rate = [(1286.50+1314.803)]+[224]
Payment Rate = [2601.303]+[224]
Payment Rate = [2825.303]
Payment Rate = $2,825.30 (subject to Part B deductible and coinsurance requirements)

Because 2001 would be the first year of a 4-year transition period, the payment rate from the ambulance fee schedule would be multiplied by 20 percent and added to 80 percent of the payment calculated by the current payment system. The payment rate for Year 2 (2002) would be calculated by multiplying the ambulance fee schedule by 50 percent and adding the result to 50 percent of the current payment system amount. The payment for Year 3 (2003) would be calculated by multiplying the ambulance fee schedule by 80 percent and adding the result to 20 percent of the current payment system amount. The payment for Year 4 (2004) would be based solely on the ambulance fee schedule.

Assuming the inflation indexed charge (IIC) in 2001, the reasonable charge rate for this service in Michigan is $1,982.26. Therefore, the total allowed charge for this service during 2001 would be:

Old HCPCS Code = A0040
New HCPCS Code = A0431 and A0436

Reasonable charge IIC	Reasonable new charge × 80%	Fee schedule	Fee schedule × 20%	Total allowed charge
$1,982.26	$1,585.81	$2,825.30	$565.06	$2,150.87

Assuming that the Part B deductible has been met, the program would pay 80 percent and the beneficiary's liability would be 20 percent, representing the Part B coinsurance amount:

Medicare Payment (80%)	Beneficiary Liability (20%)
$1,720.70	$430.17

Example 4: Air Ambulance, Rural (Independent Supplier)

A Medicare beneficiary was transported via helicopter from a rural county in Arizona to the nearest appropriate facility. The total distance from point of pick-up to the facility was 86 miles. The level of service was rotary wing.

Because the point of pick-up was in a rural, non-MSA area, this transport would be a rural trip under the proposed rule. Therefore, a rural payment rate would apply. In Arizona, the GPCI = 0.971. The ambulance fee schedule amount would be calculated as follows—

Payment Rate = [(1+RA)*((UBR*0.5)+ ((UBR*0.5)*GPCI))] +[(1+RA)*(MAR*#MILES)]
Payment Rate = [(1+0.5)*(((2573.00*0.5)+ ((2573.00*0.5)*0.971))]+ [(1+0.5)*(16*86)]
Payment Rate = [(1.5)*((1286.50)+ (1286.50*0.971))]+ [(1.5)*(1376)]
Payment Rate = [(1.5)*(1286.50+1249.192)]+[2064]
Payment Rate = [(1.5)*2535.692]+[2064]
Payment Rate = 4599.692
Payment Rate = $4,599.69 (subject to Part B deductible and coinsurance requirements)

Because 2001 is the first year of a 4 year transition period, this payment rate from the proposed fee schedule would then be multiplied by 20 percent and added to 80 percent of the payment calculated by the current payment system. Year 2 would be calculated by multiplying the fee schedule by 50 percent and adding the result to 50 percent of the current payment system amount. Year 3 would be calculated by multiplying the fee schedule by 80 percent and adding 20 percent of the current payment system amount. Year 4 (2004) is based solely on the fee schedule amount.

Assuming the inflation indexed charge (IIC) for the example in question, in 2001 the reasonable charge rate for this service in Arizona would be $1,564.80. Therefore, the total allowed charge for this service during 2001 would be:

Old HCPCS Code = A0040
New HCPCS Code = A0431 and A0436

Reasonable charge IIC	Reasonable new charge × 80%	Fee schedule	Fee schedule × 20%	Total allowed charge
$1,564.80	$1,251.84	$4,599.69	$919.94	$2,171.78

Assuming that the Part B deductible has been met, the program would pay 80 percent and 20 percent would be the beneficiary's liability:

Medicare payment (80%)	Beneficiary liability (20%)
$1,737.42	$434.36

Example 5: Ground Ambulance, Rural (Hospital Based Supplier) A Medicare beneficiary residing in a rural area in the state of Iowa was transported via ground ambulance from her home located in a rural area (non-MSA) to the nearest appropriate facility (Hospital A). Because the point of pick-up is in a rural area, under our proposal, a rural payment rate would apply. The total distance from the beneficiary's home to Hospital A is 14 miles. A BLS nonemergency transport was furnished. The level of service would be BLS (nonemergency).

For Iowa, the GPCI = 0.882. The ambulance fee schedule amount would be calculated as follows—

14 mile trip = 14 miles at the rural payment rate plus 0 miles at the regular rate.

The HCPCS codes to be used under the fee schedule are A0428 and A0425.

Payment Rate = [(RVU*(0.3+(0.7*GPCI)))*CF]+ [(((1+RG)*MGR)*#MILES≤17)+ (MGR*#MILES>#7)]
Payment Rate = [(1.00*(0.3+(0.7*0.882)))*157.52]+ [(((1+0.5)*5)*14)+(5*0)]
Payment Rate = [(1.00*(0.3+0.6174))*157.52]+ [((1.5*5)*14)+0]
Payment Rate = [(1.00*0.9174)*157.52]+ [(7.5*14)+0]
Payment Rate = [0.9174*157.52]+[105+0]
Payment Rate = [144.508848]+[105]
Payment Rate = 249.508848
Payment Rate = $249.51 (subject to Part B deductible and coinsurance requirements)

Since 2001 would be the first year of a proposed 4-year transition period, the ambulance fee schedule payment rate would be multiplied by 20 percent. The total payment under the proposed fee schedule for 2001 is:

Payment Rate = Fee Schedule * Transition Percentage
Payment Rate = 249.51*0.2
Payment Rate = 49.902
Payment Rate = $49.90

The remaining 80 percent of the payment rate is determined by the current payment system. For FIs, the current payment calculation is as follows.

Assume that Hospital A's charge (HCB) for a BLS-nonemergency service is $220.00, its charge for mileage (HCM) is $4.00 per mile, and its past year's cost-to-charge ratio (CCR) is 0.9.

Assuming that the beneficiary's Medicare Part B deductible has been met, the beneficiary's coinsurance liability for 2001 would be:

Total Charge = HCB+(HCM*#MILES)
Total Charge = 220+(4*14)
Total Charge = 220+56
Total Charge = $276.00 (Current system)

For 2001, the coinsurance is equal to 20 percent of:
Total rate = (0.80*Current System)+(0.20*FS)
Total rate = (0.80*276)+(49.90)
Total rate = (220.80)+(49.90)
Total rate = $270.70
Coinsurance = 0.20*270.70 = $54.14

For 2001, the transition payment rate is equal to:
Transition payment rate = [0.80*current rate]+[0.20*FS]
Transition Payment Rate = [0.80*((HCB)+(HCM*#MILES))*CCR]+ [0.20*FS]
Transition Payment Rate = [0.80*((220)+(4*14))*0.9]+[49.90]
Transition Payment Rate = [0.80*((220)+(56))*0.9]+[49.90]
Transition Payment Rate = [0.80*(276)*0.9]+[49.90]
Transition Payment Rate = [198.72]+[49.90]
Transition Payment Rate = $248.62

Assuming the part B deductible is met:
Medicare program payment = (transition payment rate) − (coinsurance)
Medicare program payment = 248.62 − 54.14
Medicare program payment = $194.48

Under our proposal, the payment rate for Year 2 (2002) would be calculated by multiplying the ambulance fee schedule payment rate by 50 percent and adding the result to 50 percent of the current payment system amount. The payment rate for Year 3 (2003) would be calculated by multiplying the ambulance fee schedule by 80 percent and adding the result to 20 percent of the current payment system amount. The payment rate for Year 4 (2004) would be based solely on the ambulance fee schedule.

C. Alternatives Considered

While there were many alternatives considered during the course of the negotiated rulemaking process, the statute requires that total program expenditures not exceed what the payments would have been without the fee schedule. All of the alternatives considered did not change total program expenditures. The alternatives varied in the manner in which the total amount of program expenditures might be distributed among the entities that furnish ambulance services to Medicare beneficiaries. For example, the Committee considered other geographical adjustment factors, other relative values for the levels of ambulance service, other definitions for the levels of ambulance service and other definitions for ''rural entities'', but it did not adopt them for various reasons. (A full description of these alternatives may be found at the website: www.hcfa.gov/medicare/ambmain.htm.)

D. Conclusion

We anticipate that the proposed ambulance fee schedule amounts for entities that have received lower than average payment rates historically would be relatively higher and the fee schedule amounts for entities that have received higher than average payment rates historically would be relatively lower. Generally, this would mean higher rates in the future for rural transports, lower rates in the future for urban transports, and higher rates in the future for air ambulance services. The ambulance fee schedule will have a leveling effect on coinsurance liability. While beneficiaries in those areas of historically higher than average payment rates would benefit from lower coinsurance liability, beneficiaries in areas of historically lower than average payment rates would experience an upward adjustment of coinsurance liability. Beneficiaries would also benefit in those cases in which suppliers previously did not accept assignment and billed the beneficiary the difference between the Medicare program allowed amount and their actual charge, because under the fee schedule all suppliers must accept assignment. We anticipate that the integrity of the Medicare Part B Trust Fund will be protected by the continuance of the inflation factors prescribed in the statute.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects Affected

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

For the reasons set forth in the preamble, 42 CFR chapter IV is proposed to be amended:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

I. Part 410 is amended as set forth below:

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Medical and Other Health Services

2. Section 410.40 is amended by:

A. Revising paragraph (b).

B. Revising paragraph (d)(1).

C. Republishing the introductory paragraph (d)(3).

D. Adding new paragraphs (d)(3)(iii), (d)(3)(iv), and (d)(3)(v).

The revisions and additions read as follows:

§ 410.40 Coverage of ambulance services.

* * * * *

(b) Levels of service. Medicare covers the following levels of ambulance service: basic life support ((BLS) emergency and nonemergency), advanced life support, level 1 ((ALS1) emergency and nonemergency), advanced life support, level 2 (ALS2), paramedic intercept (PI), specialty care transport (SCT), fixed wing transport (FW), and rotary wing transport (RW). See § 414.605 for a definition of each level of services.

* * * * *

(d) *Medical necessity requirements*—(1) *General rule.* Medicare covers ambulance services, including fixed wing and rotary wing ambulance services, only if they are furnished to a beneficiary whose medical condition is such that other means of transportation would be contraindicated. While physician certification allows the ambulance supplier to assert that the transportation was reasonable and necessary, the beneficiary's medical record must support the coverage of the transportation. For nonemergency ambulance transportation, the following criteria must be met to ensure that ambulance transportation is medically necessary:

(i) The beneficiary is unable to get up from bed without assistance.

(ii) The beneficiary is unable to ambulate.

(iii)The beneficiary is unable to sit in a chair or wheelchair.

These criteria, as defined, are not meant to be the sole criterion in determining medical necessity. They are one factor to be considered when

making medical necessity determinations.

* * * * *

(3) *Special rule for nonemergency, unscheduled ambulance services.* Medicare covers nonemergency, unscheduled ambulance services, provided medical necessity is established under one of the following circumstances:

* * * * *

(iii) If the ambulance provider or supplier is unable to obtain a signed physician certification statement from the beneficiary's attending physician, a signed physician certification statement must be obtained from either the physician, physician assistant (PA), nurse practitioner (NP), clinical nurse specialist (CNS), registered nurse (RN), or discharge planner, who is employed by the hospital or facility where the beneficiary is being treated, and who has personal knowledge of the beneficiary's condition at the time the ambulance transport is ordered or the ambulance service was furnished; and,

(iv) If the ambulance provider or supplier is unable to obtain the required physician certification statement within 21 calendar days following the date of the service, the ambulance supplier must document its attempts to obtain the requested physician certification statement and may then submit the claim. Acceptable documentation must include a signed return receipt from a U.S. Postal Service or other similar service. This documentation will serve as proof that the ambulance supplier attempted to obtain the required signature from the attending physician.

(v) In all cases, the provider or supplier must keep appropriate documentation on file and, upon request, present it to the contractor. The presence or absence of the signed physician certification statement or signed return receipt does not definitively demonstrate that the ambulance transport was medically necessary. The ambulance provider or supplier must meet all other coverage criteria for payment to be made.

* * * * *

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

II. Part 414 is amended as set forth below:

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, 1395rr(b)(1)).

2. Section 414.1 is revised to read as follows:

§ 414.1 Basis and scope.

This part implements the indicated provisions of the following sections of the Act:

1802—Rules for private contracts by Medicare beneficiaries.
1820—Rules for Medicare reimbursement for telehealth services.
1833—Rules for payment for most Part B services.
1834(a) and (h)—Amounts and frequency of payments for durable medical equipment and for prosthetic devices and orthotics and prosthetics.
1834(l)—Establishment of a Fee Schedule for Ambulance Services.
1848—Fee schedule for physician services.
1881(b)—Rules for payment for services to ESRD beneficiaries.
1887—Payment of charges for physician services to patients in providers.

3. A new subpart H, consisting of §§ 414.601 through 414.625, is added to read as follows:

Subpart H—Fee Schedule for Ambulance Services

Sec.
414.601 Purpose.
414.605 Definitions.
414.610 Basis of payment.
414.611 Coding system.
414.615 Transition for implementation of the ambulance fee schedule.
414.620 Publication of the ambulance services fee schedule.
414.625 Limitation on review.

Subpart H—Fee Schedule for Ambulance Services

§ 414.601 Purpose.

This subpart implements section 1834(l) of the Act, by establishing a fee schedule for the payment of ambulance services. Section 1834(l) of the Act requires that payment for all ambulance services otherwise payable on a reasonable charge system or retrospective reasonable cost reimbursement system be made under the ambulance fee schedule effective for services furnished after January 1, 2000.

§ 414.605 Definitions.

As used in this subpart, the following definitions apply to both land and water (hereafter referred to as ''ground'') and to air services:

Advanced Life Support (ALS) assessment is an assessment performed by an ALS crew that results in the determination that the patient's condition requires an ALS level of care, even if no other ALS intervention is performed.

Advanced Life Support, Level 1 (ALS1) means transportation by ambulance vehicle and medically necessary supplies and ancillary services, plus an ALS assessment by an ALS provider or the provision of at least one ALS intervention.

Advanced Life Support, Level 2 (ALS2) means transportation by ambulance vehicle and medically necessary supplies and ancillary services, plus the administration of at least three different medications and the provision of at least one of the following ALS procedures:

(1) Manual defibrillation/cardioversion.

(2) Endotracheal intubation.

(3) Central venous line.

(4) Cardiac pacing.

(5) Chest decompression.

(6) Surgical airway.

(7) Intraosseous line.

Advanced Life Support (ALS) intervention means a procedure beyond the scope of an emergency medical technician-basic (EMT-Basic).

Advanced Life Support (ALS) provider means an individual trained to the level of the EMT-Intermediate or paramedic. The EMT-Intermediate is defined as having the knowledge and skills identified for the EMT-Basic, but also as qualified to perform essential advanced techniques and to administer a limited number of medications. The EMT-Paramedic is defined as possessing the competencies of the EMT-Intermediate, but also has enhanced skills that include being able to administer additional interventions and medications.

Basic Life Support (BLS) means transportation by ambulance vehicle and medically necessary supplies and ancillary services, plus the provision of BLS ambulance services. The EMT-Basic, in addition to being able to operate limited equipment on board the vehicle and being able to assist in performing assessments and interventions, is qualified to function as minimum staff for an ambulance and, to establish a peripheral intravenous (IV) line.

Conversion Factor (CF) is a nationally uniform dollar value, multiplied by relative value units for a service to produce a payment amount.

Emergency Response means responding immediately to an emergency medical condition. An immediate response is one in which the ambulance supplier begins as quickly as possible to take the steps necessary to respond to the call.

Fixed Wing Air Ambulance (FW) means transportation by a fixed wing aircraft that is certified as a fixed wing air ambulance and such ancillary services as may be medically necessary.

Geographic Adjustment Factor (GAF) means the practice expense (PE) portion of the geographic practice cost index

(GPCI) from the physician fee schedule as applied to a percentage of the base rate. For ground ambulance services, the PE portion of the GPCI is applied to 70 percent of the base rate. For air ambulance services, the practice expense (PE) portion of the GPCI is applied to 50 percent of the base rate.

Goldsmith Modification means the methodology for the identification of rural census tracts that are located within large metropolitan counties of at least 1,225 square miles, but are so isolated from the metropolitan core of that county by distance or physical features so as to be more rural than urban in character.

Loaded Mileage means the number of miles for which the Medicare beneficiary is transported in the ambulance vehicle.

Paramedic ALS Intercept (PI) means EMT-Paramedic services furnished by an entity that does not furnish the ambulance transport. See § 410.40(c) of this chapter for criteria governing direct payment.

Point of Pick-up means the location of the beneficiary at the time he or she is placed on board the ambulance.

Relative value units (RVUs) measure the value of ambulance services relative to the value of a base level ambulance service.

Rotary Wing Air Ambulance (RW) means transportation by a helicopter that is certified as an ambulance and such ancillary services as may be medically necessary.

Rural adjustment factor (RAF) means an adjustment applied to services at the point of pick-up in a rural area and added to the base payment rate.

Services in a Rural area means services that are furnished in an area outside a Metropolitan Statistical Area (MSA) or a New England County Metropolitan Area (NECMA) or an area within an MSA identified as rural, using the Goldsmith modification.

Specialty Care Transport (SCT) means interfacility transportation by an ambulance vehicle, including medically necessary supplies and ancillary services, of a critically injured or ill patient at a level of service beyond the scope of the EMT-Paramedic. SCT is necessary when a patient's condition requires ongoing care that must be furnished by one or more health professionals in an appropriate specialty area (for example, nursing, emergency medicine, respiratory care, cardiovascular care, or a paramedic with additional training).

§ 414.610 Basis of payment.

(a) *Method of payment.* Medicare payment for ambulance services is based on the lesser of the actual charge or the applicable fee schedule amount. The fee schedule payment for ambulance services equals a base rate for the level of service plus payment for mileage and applicable adjustment factors. All ambulance services (regardless of the vehicle (for example, ALS or BLS) furnishing the service or of any local or State ordinances) are paid under the fee schedule specified in this subpart.

(b) *Mandatory assignment.* Effective with implementation of the ambulance fee schedule described in § 414.601, for services furnished on or after January 1, 2001, all payments made for ambulance services are made on an assignment-related basis. Ambulance suppliers must accept the Medicare allowed charge as payment in full and may not bill or collect from the beneficiary any amount other than the unmet Part B deductible and Part B coinsurance amounts. Violations of this requirement may subject the provider or supplier to sanctions, as provided by law. There is no transitional period for mandatory assignment of claims.

(c) *Formula for computation of payment amounts.* The fee schedule payment amount for ambulance services is computed according to the following:

(1) *Relative value units.* The relative value unit (RVU) scale for the ambulance fee schedule is as follows:

Service level	Relative value units (RVUs)
BLS	1.00
BLS—Emergency	1.60
ALS1	1.20
ALS1—Emergency	1.90
ALS2	2.75
SCT	3.25
PI	1.75

(i) *Ground ambulance service levels.* RVUs for ground ambulance services are multiplied by a CF and adjusted by the GAF and rural adjustment factor (RAF), as appropriate, in order to determine the respective payment rates.

(ii) *Air ambulance service levels.* The base payment rate for air is adjusted by the GAF and RAF, as appropriate, in order to determine the amount of payment. There are no RVUs for air ambulance services because there are only two types of air ambulance services: fixed wing (FW) and rotary wing (RW).

(iii) *Loaded mileage.* Payment is made for each loaded mile. Air mileage is based on loaded miles flown, as expressed in statute miles. There are three mileage payment rates for ground and water, FW, and RW.

(iv) *Geographic adjustment factor (GAF).* For ground ambulance services, the PE portion of the GPCI from the physician fee schedule is applied to 70 percent of the base rate. For air ambulance services, the PE portion of the physician fee schedule GPCI is applied to 50 percent of the base rate.

(v) *Rural adjustment factor (RAF).* For ground ambulance services, a 50 percent increase is applied to the mileage rate for each of the first 17 miles; the regular mileage allowance applies to every mile over 17 miles. For air ambulance services, a 50 percent increase is applied to the total payment for air services; that is, the adjustment applies to the sum of the base rate and the mileage.

(2) *Payment Rates.* Payment, in accordance with this section, represents payment in full (subject to applicable Medicare Part B deductible and coinsurance requirements as described in subpart G of part 409 of this chapter) for all costs (routine, ancillary, and capital-related) associated with furnishing inpatient SNF services to Medicare beneficiaries other than costs associated with operating approved educational activities as described in § 413.85 of this chapter.

(d) *Point of pick-up.* The zip code of the point of pick-up must be reported on each claim for ambulance services, so that the correct GAF and RAF may be applied, as appropriate.

(e) *Updates.* The CF is updated annually for inflation by a factor equal to the payment amounts provided under the fee schedule for services furnished in CY 2001 and each subsequent year at amounts under the fee schedule for services furnished during the previous year. The CF is increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year reduced in 2001 and 2002 by 1 percentage point.

(f) *Adjustments.* The CF may be adjusted to take into account factors that, as determined by the Secretary, show data that results in a significantly different aggregate payment of items and services paid under the ambulance fee schedule.

§ 414.611 Coding system.

All claims for services for which the amount of payment is determined under § 414.610 must include a code (or codes) from the uniform coding system specified by the Secretary that identifies the services furnished.

§ 414.615 Transition for implementation of the ambulance fee schedule.

The fee schedule for ambulance services will be phased in over 4 years beginning January 1, 2001. Payment for services furnished during the transition period are made based on a combination of the fee schedule payment for ambulance services and the amount the carrier would have paid absent the fee schedule for ambulance services, as follows:

(a) For services furnished in CY 2001, the payment is based 80 percent on the reasonable charge-based payments for independent suppliers and 80 percent on reasonable cost for providers, plus 20 percent of the ambulance fee schedule amount. The reasonable charge or reasonable cost portion of payment in CY 2001 is equal to the reasonable charge or reasonable cost for CY 2000, multiplied by the statutory inflation factors for ambulance services.

(b) For services furnished in CY 2002, the payment is based 50 percent on the reasonable charge or reasonable cost, as applicable, plus 50 percent of the ambulance fee schedule amount. The reasonable charge and reasonable cost portion in CY 2002 is equal to the supplier or provider's reasonable charge or reasonable cost for CY 2001, multiplied by the statutory inflation factors for ambulance services.

(c) For services furnished in CY 2003, the payment is based 20 percent on the reasonable charge or reasonable cost, plus 80 percent of the ambulance fee schedule amount. The reasonable charge and reasonable cost in CY 2003 for each supplier or provider respectively is equal to the supplier or provider's reasonable charge or reasonable cost for CY 2002, multiplied by the statutory inflation factors for ambulance services.

(d) For services furnished in CY 2004 and thereafter, the payment is based solely on the ambulance fee schedule amount.

(e) *Updates.* The portion of the transition payment that is based on the existing payment methodology (that is, the non fee schedule portion) is updated annually for inflation by a factor equal to the projected consumer price index for all urban consumers (U.S. city average), from March to March for claims paid under cost reimbursement and from June to June for claims paid under reasonable charges, minus 1 percentage point. The portion of the transition payment that is based on the ambulance fee schedule is updated annually for inflation as described in § 414.610(e).

§ 414.620 Publication of the ambulance services fee schedule.

Each year, HCFA will publish updates to the fee schedule for ambulance services.

§ 414.625 Limitation on review.

There shall be no administrative or judicial review under sections 1869 of the Act or otherwise of the amounts established under the fee schedule for ambulance services, including but not limited to matters described in section 1834(l)(2) of the Act.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 15, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: August 31, 2000.

Donna E. Shalala,

Secretary.

Note: The following addendum will not appear in the Code of Federal Regulations.

ADDENDUM A

[** When using this chart, use all codes that apply **]

#	On-scene condition (general)	On-scene condition (specific)	Svc. Lev.	Comments and examples [not all-inclusive]
		Emergency Conditions (non-traumatic)		
1	Abdominal pain	With other signs or symptoms	ALS	Nausea, vomiting, fainting, pulsatile mass, distention, rigid, tenderness on exam, guarding.
2	Abdominal pain	Without other signs or symptoms	BLS	
3	Abnormal cardiac rhythm/Cardiac dysrythmia.	Potentially life-threatening	ALS	Bradycardia, junctional and ventricular blocks,non-sinus tachycardias, PVC's >6, bi and trigeminy, vtach,vfib, atrial flutter, PEA, asystole.
4	Abnormal skin signs		ALS	Diaphorhesis, cyanosis, delayed cap refill, poor turgor, mottled.
5	Abnormal vital signs (includes abnormal pulse oximetry).	With symptoms	ALS	Other emergency conditions.
6	Abnormal vital signs (includes abnormal pulse oximetry).	Without symptoms	BLS	
7	Allergic reaction	Potentially life-threatening	DALS	Other emergency conditions, rapid progression of symptoms, prior hx. of anaphylaxis, wheezing, difficulty swallowing.
8	Allergic reaction	Other	BLS	Hives, itching, rash, slow onset, local swelling, redness, erythema.
9	Animal bites/sting/envenomation	Potentially life or limb-threatening	ALS	Symptoms of specific envenomation, significant face, neck, trunk, and extremity involvement; other emergency conditions.
10	Animal bites/sting/envenomation	Other	BLS	Local pain and swelling, special handling considerations and patient monitoring required.
11	Sexual assault	With injuries	ALS	
12	Sexual assault	With no injuries	BLS	
13	Blood glucose	Abnormal – <80 or >250, with symptoms.	ALS	Altered mental status, vomiting, signs of dehydration, *etc.*

ADDENDUM A—Continued

[** When using this chart, use all codes that apply **]

#	On-scene condition (general)	On-scene condition (specific)	Svc. Lev.	Comments and examples [not all-inclusive]
14	Respiratory arrest		ALS	Apnea, hypoventilation requiring ventilatory assistance and airway management.
15	Difficulty breathing		ALS	
16	Cardiac arrest—Resuscitation in progress.		ALS	
17	Chest pain (non-traumatic)		ALS	Dull, severe, crushing, substernal, epigastric, left sided chest pain associated with pain of the jaw, left arm, neck, back, and nausea, vomiting, palpitations, pallor, diaphoresis, decreased LOC.
18	Choking episode		ALS	
19	Cold exposure	Potentially life or limb threatening	ALS	Temperature< 95F, deep frost bite, other emergency conditions.
20	Cold exposure	With symptoms	BLS	Shivering, superficial frost bite, and other emergency conditions.
21	Altered level of consciousness (non-traumatic).		ALS	Acute condition with Glascow Coma Scale<15.
22	Convulsions/Seizures	Seizing, immediate post-seizure, post-ictal, or at risk of seizure & requires medical monitoring/observation.	ALS	
23	Eye symptoms, non-traumatic	Acute vision loss and/or severe pain	BLS	
24	Non traumatic headache	With neurologic distress conditions	ALS	
25	Non traumatic headache	Without neurologic symptoms	BLS	
26	Cardiac Symptoms other than chest pain.	Palpitations, skipped beats	ALS	
27	Cardiac symptoms other than chest pain.	Atypical pain or other symptoms	ALS	Persistent nausea and vomiting, weakness, hiccups, pleuritic pain, feeling of impending doom, and other emergency conditions.
28	Heat Exposure	Potentially life-threatening	ALS	Hot and dry skin, Temp>105, neurologic distress, signs of heat stroke or heat exhaustion, orthostatic vitals, other emergency conditions.
29	Heat exposure	With symptoms	BLS	Muscle cramps, profuse sweating, fatigue.
30	Hemorrhage	Severe (quantity)	ALS	Uncontrolled or significant signs of shock, other emergency conditions.
31	Hemorrhage	Potentially life-threatening	ALS	Active vaginal, rectal bleeding, hematemesis, hemoptysis, epistaxis, active post-surgical bleeding.
32	Infectious diseases requiring isolation procedures / public health risk.		BLS	
33	Hazmat Exposure		ALS	Toxic fume or liquid exposure via inhalation, absorption, oral, radiation, smoke inhalation.
34	Medical Device Failure	Life or limb threatening malfunction, failure, or complication.	ALS	Malfunction of ventilator, internal pacemaker, internal defibrillator, implanted drug delivery device.
35	Medical Device Failure	Health maintenance device failures	BLS	O2 supply malfunction, orthopedic device failure.
36	Neurologic Distress	Facial drooping; loss of vision; aphasia; difficulty swallowing; numbness, tingling extremity; stupor, delirium, confusion, hallucinations; paralysis, paresis (focal weakness); abnormal movements; vertigo; unsteady gait/balance; slurred speech, unable to speak.	ALS	
37	Pain, acute and severe not otherwise specified in this list.	Patient needs specialized handling to be moved: pain exacerbated by movement.	BLS	
38	Pain, severe not otherwise specified in this list.	Acute onset, unable to ambulate or sit	BLS	Pain is the reason for the transport.
39		Pain, severe not otherwise specified in this list.	ALS	Use severity scale (7–10 for severe pain), pt. receiving pre-hospital pharmacologic intervention.

ADDENDUM A—Continued

[** When using this chart, use all codes that apply **]

#	On-scene condition (general)	On-scene condition (specific)	Svc. Lev.	Comments and examples [not all-inclusive]
40	Back pain—non-traumatic (T and/or LS).	Suspect cardiac or vascular etiology	ALS	Other emergency conditions, absence of or decreased leg pulses, pulsatile abdominal mass, severe tearing abdominal pain.
41	Back pain—non-traumatic (T and/or LS).	New neurologic symptoms	ALS	Neurologic distress list.
42	Poisons, ingested, injected, inhaled, absorbed.	Adverse drug reaction, poison exposure by inhalation, injection or absorption.	ALS	
43	Alcohol intoxication, drug overdose (suspected).	Unable to care for self; unable to ambulate; no risk to airway; no other symptoms.	BLS.	
44	Alcohol intoxication, drug overdose (suspected).	All others, including airway at risk, pharmacological intervention, cardiac monitoring.	ALS.	
45	Post—operative procedure complications.	Major wound dehiscence, evisceration, or requires special handling for transport.	BLS	Orthopedic appliance; prolapse.
46	Pregnancy complication/ Childbirth/ Labor.		ALS	
47	Psychiatric/Behavioral	Abnormal mental status; drug withdrawal.	ALS	Suicidal, homicidal, hallucinations, violent, Disoriented, DT's, withdrawal symptoms, transport required by state law/court order.
48	Psychiatric/Behavioral	Threat to self or others, severe anxiety, acute episode or exacerbation of paranoia, or disruptive behavior.	BLS	
49	Sick Person	Fever with associated symptoms (headache, stiff neck, *etc.*).	ALS	
50	Sick Person	Fever without associated symptoms	BLS	>102 in adults; >104 in children.
51	Sick Person	No other symptoms	BLS	With other emergency conditions
52	Sick Person	Nausea and vomiting, diarrhea, severe and incapacitating.	ALS	
53	Unconscious, Fainting, Syncope	Transient unconscious episode or found unconscious.	ALS	
54	Near syncope, weakness or dizziness	Acute episode or exacerbation	ALS	
55	Medical/Legal	State or local ordinance requires ambulance transport under certain conditions.	BLS	Minor with no guardian; DWI arrest at MVA for evaluation; arrests and medical conditions (psych, drug OD).
		Emergency Conditions—Trauma		
56	Major trauma	As defined by ACS Field Triage Decision Scheme.	ALS	Trauma with one of the following: Glascow <14; systolic BP<90; RR<10 or >29; all penetrating injuries to head, neck, torso, extremities proximal to elbow or knee; flail chest; combination of trauma and burns; pelvic fracture; 2 or more long bone fractures; open or depressed skull fracture; paralysis; severe mechanism of injury including: ejection, death of another passenger in same patient compartment, falls >20'', 20'' deformity in vehicle or 12'' deformity of patient compartment, auto pedestrian/bike, pedestrian thrown/run over, motorcycle accident at speeds >20 mph and rider separated from vehicle.
57	Other trauma	Need to monitor or maintain airway	ALS	Decreased LOC, bleeding into airway, trauma to head, face or neck.
58	Other trauma	Major bleeding	ALS	Uncontrolled or significant bleeding.
59	Other trauma	Suspected fracture/dislocation requiring splinting/immobilization for transport.	BLS	Spinal, long bones, and joints including shoulder elbow, wrist, hip, knee, and ankle, deformity of bone or joint.
60	Other trauma	Penetrating extremity injuries	BLS	Isolated with bleeding stopped and good CSM.
61	Other trauma	Amputation—digits	BLS	

ADDENDUM A—Continued

[** When using this chart, use all codes that apply **]

#	On-scene condition (general)	On-scene condition (specific)	Svc. Lev.	Comments and examples [not all-inclusive]
62	Other trauma	Amputation—all other	ALS	
63	Other trauma	Suspected internal, head, chest, or abdominal injuries.	ALS	Signs of closed head injury, open head injury, pneumothorax, hemothorax, abdominal bruising, positive abdominal signs on exam, internal bleeding criteria, evisceration.
64	Other trauma	Severe pain requiring pharmacologic pain control.	ALS	See severity scale.
65	Other trauma	Trauma NOS: it is up to the provider to furnish sufficient documentation to support this claim.	BLS	Ambulance required because injury is associated with other emergency conditions or other reasons for transport exist such as special patient handling or patient safety issues.
66	Burns	Major—per ABA	ALS	Partial thickness burns > 10% TBSA; involvement of face, hands, feet, genitalia, perineum, or major joints; third degree burns; electrical; chemical; inhalation; burns with preexisting medical disorders; burns and trauma;
67	Burns	Minor—per ABA	BLS	Other burns than listed above.
68	Lightning		ALS	
69	Electrocution		ALS	
70	Near Drowning		ALS	
71	Eye injuries	Acute vision loss or blurring, severe pain or chemical exposure, penetrating, severe lid lacerations.	BLS	

#	Reason for transport (general)	Reason for transport (specific)	Svc. Lev.	Comments
		Non-Emergency		
72	Bed confined (at the time of transport)	*Unable to get up without assistance; and. *Unable to ambulate; and *Unable to sit in a chair or wheelchair	BLS	Patient is going to a medical procedure, treatment, testing, or evaluation that is medically necessary.
73	ALS monitoring, required	Cardiac/hemodynamic monitoring required en route.	ALS	Expectation monitoring is needed before and after transport.
74	ALS monitoring, required	Advanced airway management	ALS	Ventilator dependent, apnea monitor, possible intubation needed, deep suctioning.
75	ALS monitoring, required	IV meds required en route	ALS	Does not apply to self-administered IV medications.
76	ALS monitoring, required	Chemical restraint	ALS	
77	BLS monitoring required	Suctioning required en route	BLS	Per transfer instructions.
78	BLS monitoring required	Airway control/positioning required en route.	BLS	Per transfer instructions.
79	BLS monitoring required	Third party assistance/attendant required to apply, administer, or regulate or adjust oxygen en route.	BLS	Does not apply to patient capable of self-administration of portable or home O2. Patient must require oxygen therapy and be so frail as to require assistance.
80	Specialty care monitoring	A level of service provided to a critically injured or ill patient beyond the scope of the national paramedic curriculum.	SCT	
81	Medical conditions that contraindicate transport by other means.	Patient Safety: Danger to self or others. — In restraints	BLS	Refer to definition in the CFR—sec. 482.13(e).
82	Medical conditions that contraindicate transport by other means.	Patient safety: Danger to self or others. — Monitoring	BLS	Behavioral or cognitive risk such that patient requires monitoring for safety.

83	Medical conditions that contraindicate transport by other means.	Patient safety: Danger to self or others.	Seclusion (Flight risk).	BLS	Behavioral or cognitive risk such that patient requires attendant to assure patient does not try to exit the ambulance prematurely. CFR sec. 482.13(f)(2) for definition.
84	Medical conditions that contraindicate transport by other means.	Patient safety	Risk of falling off wheel chair or stretcher while in motion.	BLS	Patient's physical condition is such that patient risks injury during vehicle movement despite restraints. Indirect indicators include MDS criteria.
85	Medical conditions that contraindicate transport by other means.	Special handling en route.	Isolation	BLS	Includes patients with communicable diseases or hazardous material exposure who must be isolated from public or whose medical condition must be protected from public exposure; surgical drainage complications.
86	Medical conditions that contraindicate transport by other means.	Special handling en route.	Patient Size	BLS	Morbid obesity which requires additional personnel or equipment to transfer.
87	Medical conditions that contraindicate transport by other means.	Special handling en route.	Orthopedic device ...	BLS	Backboard, halotraction, use of pins and traction, *etc.*
88	Medical conditions that contraindicate transport by other means.	Special handling en route.	1 person for physical assistance in transfers.	BLS	
89	Medical conditions that contraindicate transport by other means.	Special handling en route.	Severe pain	BLS	Pain must be aggravated by transfers or moving vehicle such that trained expertise of EMT required (pain scale). Pain is present, but is not sole reason for transport.
90	Medical conditions that contraindicate transport by other means.	Special handling en route.	Positioning requires specialized handling.	BLS	Requires special handling to avoid further injury (such as with >grade 2 decubiti on buttocks). Generally does not apply to shorter transfers of <1 hour. Positioning in wheelchair or standard car seat inappropriate due to contractures or recent extremity fractures—post-op hip as an example.

#	Reason for transfer (general)	Reason for transfer (specific)	Ser. Lev.	Comments
		Inter-facility		
91	EMTALA-certified inter-facility transfer to a higher level of care.	Physician has made the determination that this transfer is needed—Carrier only needs to know the level of care and mode of transport.	BLS, ALS, SCT, FW, RW ..	Excludes patient-requested EMTALA transfer.
92	Service not available at originating facility, *and* must meet one or more emergency or non-emergency conditions.	.....	BLS, ALS, SCT, FW, RW ..	Specify what service is not available.
93	Service not covered	Indicates to Carrier that claim should be automatically denied.		

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September 12, 2000

Part III

Department of Agriculture

Food and Nutrition Service

7 CFR Part 226

Child and Adult Care Food Program; Improving Management and Program Integrity; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

RIN 0584–AC24

Child and Adult Care Food Program; Improving Management and Program Integrity

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes changes to the Child and Adult Care Food Program regulations. These changes result from the findings of State and Federal Program reviews and from audits and investigations conducted by the Office of Inspector General. This rule proposes to revise: State agency criteria for approving and renewing institution applications; certain State- and institution-level monitoring requirements; Program training and other operating requirements for child care institutions and facilities; and other provisions which we are required to change as a result of the Healthy Meals for Healthy Americans Act of 1994, the Personal Responsibility and Work Opportunities Reconciliation Act of 1996, and the William F. Goodling Child Nutrition Reauthorization Act of 1998. Additional statutory changes resulting from enactment of Public Law 106–224, the Agricultural Risk Protection Act of 2000, will be addressed in one or more future rulemaking actions. The proposed changes are primarily designed to improve Program operations and monitoring at the State and institution levels and, where possible, to streamline and simplify Program requirements for State agencies and institutions.

DATES: To be assured of consideration, comments must be postmarked on or before December 11, 2000. Comments will also be accepted via E Mail submission at the following Internet address: CNDPROPOSAL@FNS.USDA.GOV.

ADDRESSES: Comments should be addressed to Mr. Robert Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302–1594. All written submissions will be available for public inspection at this location Monday through Friday, 8:30 a.m.–5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Morawetz or Ms. Melissa Rothstein at the above address or by telephone at (703) 305–2620. A regulatory impact analysis was completed as part of the development of this proposed rule. Copies of this analysis may be requested from Mr. Morawetz or Ms. Rothstein.

SUPPLEMENTARY INFORMATION:

Background

Why is USDA issuing this proposed rule?

In recent years, State and Federal Program reviews have found numerous cases of mismanagement, abuse, and, in some instances, fraud by child care institutions and facilities, especially (though not exclusively) in the family day care home component of the Child and Adult Care Food Program (CACFP). These reviews revealed weaknesses in State agency and institution management controls over Program operations, and examples of regulatory noncompliance by institutions, including failure to pay facilities or failure to pay them in a timely manner; improper use of Program funds for non-Program expenditures; and improper meal reimbursements due to incorrect meal counts or to miscategorized or incomplete income eligibility statements. In addition, audits and investigations conducted by the Office of Inspector General (OIG) have raised serious concerns regarding the adequacy of financial and administrative controls in CACFP.

Why did OIG conduct these audits and investigations?

The Food and Nutrition Service (FNS) asked OIG to conduct an audit of the family day care home component of CACFP because of the results of State and Federal Program reviews. OIG selected five States for inclusion in the audit based on the States' total family day care home sponsor and provider enrollment, program costs, and geographic location. Then, it randomly selected family day care sponsors and providers within those five States to be included in the audits.

What did the OIG audits reveal?

In 1995, OIG released a report (No. 27600–6–At) which presented the results of these five audits. The audits evaluated:

- The adequacy of FNS, State agency, and family day care home sponsors' financial and administrative controls over meal claims;
- The accuracy of Program and participation data and claims for reimbursement submitted by family day care home sponsors; and
- Whether State agencies and participating institutions complied with applicable laws, regulations, and guidance.

These audits found serious types of regulatory noncompliance by both sponsors and homes, including:

- Meals claimed for absent children;
- Meals claimed for nonexistent homes and children;
- Lack of documentation for meal counts and/or menu records;
- Failure by sponsors to perform required monitoring visits; and
- Sponsors' failure to require providers to attend training.

Later, OIG conducted additional audits of family day care home and child care center sponsors, many of which State or Federal Program administrators had suspected of having serious management problems.

These targeted audits, which were released in August of 1999 and were referred to collectively as ''Operation Kiddie Care'' by OIG, confirmed the findings of the 1995 audits and developed additional findings as well.

What were OIG's recommendations to FNS in the 1995 audit?

Based on its findings, OIG's 1995 audit recommended changes to CACFP review requirements and management controls. Their most significant recommendations were that the CACFP regulations be amended to require that:

- Sponsors and State agencies make unannounced monitoring visits to day care homes;
- Parental contacts be made in order to verify children's Program participation;
- Sponsor reviews of day care homes include, at a minimum, reconciliation of enrollment, attendance, and meal claim data;
- All family day care home providers receive training each year; and
- At a minimum, all State agency reviews include certain specified review elements.

In total, the 1995 audit made fifteen recommendations. We have completed action on the five OIG recommendations from the national audit which do not require regulatory change. The other ten recommendations would require regulatory change, most of which are addressed in this preamble. Recommendations from the 1995 audit which were addressed in Public Law 106–224 will be addressed in a separate rulemaking action.

We agree with the 1995 audit recommendations and believe they will support our efforts to improve CACFP administration. In some cases, we believe that OIG's recommendations

regarding family day care home sponsoring organizations and day care home providers have merit for other types of institutions and facilities participating in the Program as well.

Is the Department including in this proposal any of the recommendations from OIG's 1999 ''Operation Kiddie Care'' audit?

Yes. Most of the ''Operation Kiddie Care'' audit's recommendations for regulatory changes also appear in this proposed rule. Those which are not addressed in this rule will be included in a separate rulemaking action, due to the fact that they were included in Pub. L. 106–224. The single exception to this statement is that we have not incorporated, either in this proposal or in the separate rulemaking being developed to implement Pub. L. 106–224, the audit's recommendation for a major Program design change in the way that sponsoring organizations of family day care homes are reimbursed for their administrative expenses. We fully concur with OIG regarding the seriousness of the ''Kiddie Care'' audit's findings, and have already addressed a number of issues raised in that audit in Program training which was provided to State agency staff during the fall and winter of 1999–2000. Nevertheless, we have not received sufficient input from the public and from Program stakeholders to make legislative or regulatory proposals regarding Program design or structure at this time.

Therefore, we would like to use this opportunity to solicit comment on this recommendation from Program stakeholders and others who are knowledgeable of CACFP. The major program design recommendation from the ''Kiddie Care'' audit on which we are seeking public comment is OIG's proposal that we develop a new system of administrative reimbursement for sponsors of family day care homes. The current administrative reimbursement system for sponsors of family day care homes sets a cap on administrative expenses which is based on the total number of homes sponsored. Sponsors are paid the lesser of: the number of homes administered times a per home administrative rate; actual administrative costs; or the sponsor's approved budget. Thus, under the current structure, there is a built-in incentive for day care home sponsors to administer more homes, and a built-in disincentive to terminate homes' CACFP participation, even if the homes are doing a poor job of administering the Program, since a larger number of homes raises the ''ceiling'' on the sponsor's administrative earnings.

The management improvement training provided to State Program administrators addresses this problem by providing State agencies with the tools to perform better and more thorough reviews of sponsors' budgets and budget revisions, administrative costs will be held to reasonable levels, regardless of the ''ceiling'' resulting from the homes times rates calculation. However, even if these budget review techniques are fully implemented and work as intended, the current system may perpetuate some of the incentive for sponsors to administer more homes, because their administrative cost ceiling will continue to be determined by the number of homes administered. We are therefore asking readers of this rule to comment on the following possible alternatives to the current system of administrative reimbursement for sponsors of family day care homes:

- Eliminate ''homes times rates'' as a component of the administrative cost system, instead paying sponsors the lesser of actual costs or approved budget amounts;
- Establish a fixed percentage of the meal reimbursement distributed to providers as the sponsor's administrative payment. In other words, if the sponsor disburses $300,000 per month in meal reimbursements to its providers, they would receive, in addition to the $300,000 in meal reimbursements for its providers, up to some fraction (perhaps 10 to 15 percent) of that amount to cover all of their approved and allowable administrative expenses;
- Pay sponsors a fixed fee for each reimbursable meal served by their providers;
- Lower the per home administrative rates for sponsors of more than 200 homes, to reduce their financial incentive to sponsor more homes; and
- Any other system of administrative reimbursement which commenters might recommend.

Ultimately, we will analyze comments made in response to these possible alternatives to the current administrative reimbursement system, along with input gathered from other Program stakeholders, and either develop legislative proposals for congressional consideration or present a separate regulatory proposal for changes to this aspect of the Program, as appropriate. We plan to offer legislative proposals, and/or to issue another rulemaking or other guidance addressing these issues, as appropriate, no later than March 31, 2001.

How is the remainder of this preamble organized?

This rule proposes revisions to CACFP regulations based on the 1995 and 1999 OIG audit recommendations; the results of State and Federal administrative reviews; discussions with OIG and Program administrators regarding reviews, audits and investigations undertaken since 1995; and suggestions offered by Program administrators and included in comprehensive CACFP management improvement guidance which FNS issued in 1997 and 1998.

The preamble is divided into four parts:

I. State agency review of institutions' Program applications;

II. State agency and institution monitoring requirements;

III. Training and other operational requirements; and

IV. Other provisions mandated by Pub. L. 103–448, the Healthy Meals for Healthy Americans Act of 1994, Pub. L. 104–193, the Personal Responsibility and Work Opportunities Reconciliation Act of 1996, and Pub. L. 105–336, the William F. Goodling Child Nutrition Reauthorization Act of 1998.

While many of the changes proposed in Parts I–III of this preamble are discretionary changes designed to improve Program management and streamline Program operations, the Department is also including a number of changes to the CACFP regulations which it is required to make by Pub. Laws 103–448, 104–193, and 105–336. Although the Department encourages public comments on its approach to implementing the changes required by these three laws, commenters are reminded that the provisions of these laws, amending the Richard B. Russell National School Lunch Act (NSLA), *require* that these changes be made. Most of the mandatory changes are located in Part IV of this preamble, though some appear in other parts of the preamble, depending on whether the statutory change was thematically related to the discretionary changes being discussed in another part of the preamble. Non-discretionary provisions will be identified in the preamble discussion.

In addition to the statutory provisions above, on June 20, 2000, President Clinton signed the Agricultural Risk Protection Act (ARPA) of 2000. Section 243 of that Act, entitled ''Child and Adult Care Food Program Integrity'', mandated a number of changes to CACFP designed to reduce the risk of Program fraud, abuse, or mismanagement. To implement these

mandated changes, we will soon address in a separate complementary rulemaking action provisions which relate to many of the issues and provisions which are addressed in this rulemaking. The new statutory changes affecting CACFP to be addressed in the second rulemaking are as follows:

(1) Restructuring of the definition of the term ''institution'' [Sec. 243(a)(1)–(7) of ARPA];

(2) Change to basic institution eligibility criteria:

(a) Institutions must not have been determined ineligible to participate in any publicly-funded program [Sec. 243(a)(8)(A)];

(b) Requirement that sponsors employ an appropriate number of monitoring staff [Sec. 243(a)(8)(B)];

(c) Restrictions on outside employment for sponsor employees [Sec. 243(a)(8)(D)]; and

(d) State bonding requirements [Sec. 243(a)(8)(D)];

(3) Conditions for approval of institutions [Sec. 243(b)(1)] including:

(a) Requiring all institutions participating in CACFP to be financially viable, administratively capable, and have internal controls in place to ensure Program accountability;

(b) Eliminating the participation of private nonprofit institutions which are in a ''moving towards tax exempt'' status; and

(c) Requiring that new sponsors demonstrate a need for their services, by showing that they provide Program benefits to currently unserved facilities or children.

(4) Basic monitoring requirements [Sec. 243(b)(2)];

(5) Provision of Program information to parents [Sec. 243(b)(4)];

(6) Allowable administrative expenses for sponsoring organizations [Sec. 243(b)(5)];

(7) Termination or suspension of participating organizations, corrective action, hearings, disqualified list [Sec. 243(c)];

(8) Funds recovery [Sec. 243(d)];

(9) Limitation on center sponsors' administrative expenses [Sec. 243(e)];

(10) Provider transfers [Sec. 243(f)];

(11) Addition of third State to for-profit demonstration project [Sec. 243(g)];

(12) Training and technical assistance on fraud and abuse identification and prevention [Sec. 243(h)];

(13) At-risk program [Sec. 243(i)]; and

(14) Withholding of State Administrative Expense Funds (SAE) due to State failure to train or monitor [Sec. 243(j)].

Part I. State Agency Review of Institutions' Program Applications

A. State Agency Review of a New Institution's Application

What does the law say with regard to the duration of an application?

Section 204(a)(3) of Pub. L. 101–147 amended section 17(d) of the NSLA (42 U.S.C. 1766(d)) by adding a new paragraph (2)(A) which requires the Department to ''develop a policy that allows institutions providing child care . . . , at the option of the State agency, to reapply for assistance . . . at 2-year intervals.'' It also requires that State agencies choosing this option must ''confirm on an annual basis'' that each participating institution is in compliance with the licensing and approval requirements set forth at section 17(a)(1) (42 U.S.C. 1766(a)(1)). Later, in 1994, section 116(b) of Pub. L. 103–448 amended section 17(d)(2)(A) (42 U.S.C. 1766 (d)(2)(A)) by extending the two-year CACFP reapplication interval to three years. The enactment of these provisions lessened the burden placed on State agencies and institutions by eliminating the requirement for an annual Program application. In addition, the provisions gave State agencies the option of allowing institutions to apply for participation at other than annual intervals.

Are three-year and one-year applications the only options available to the State agency?

No. Although the statute requires reapplication for participation at least once every three years, we believe that it does not require annual or biennial applications to be the only alternatives to the triennial option. Therefore, this rule proposes to remove the references to an annual application found in the introductory paragraphs of current sections 226.6(b) and 226.6(f), and in section 226.7(g), and to further revise section 226.6(b) to require each institution to reapply for participation at a time determined by the State agency, as long as not more than three years have elapsed since its last application approval. This proposal would not prevent administering agencies from retaining an annual application process; rather, it would give State agencies the option to consider whether the annual renewal of applications represents the most efficient and effective means of carrying out their Program responsibilities, and to consider any length of application between 12 and 36 months. In addition, if an institution submits a renewal application, and the State agency has not conducted a review of that institution since the last agreement was signed or extended but has reason to believe that such a review is immediately necessary, the State agency may approve the institution for a period of less than one year, pending the completion of such a review.

Is the Department proposing changes other than giving State agencies the option of using three-year applications?

Yes. We are aware of the desirability of establishing less burdensome application requirements. The original requirements were promulgated at a time when State agencies and institutions were required to deal with a new and rapidly expanding program. However, by 1990, when we convened the Task Force on Paperwork Reduction in Child Nutrition Programs (which was mandated by section 108 of Pub. L. 101–147, the Child Nutrition and WIC Reauthorization Act of 1989), the CACFP application was frequently cited as including redundant and unnecessary elements, and as requiring the annual submission of information for which updates either are not needed that frequently or are already collected in monthly reports. We therefore believe it is appropriate to consider regulatory changes other than the single change (giving State agencies the option of taking applications on an up to three-year cycle) required by the statute.

What other general changes to the application process does this rule propose?

There are four.

First, this rule proposes to reorganize sections 226.6(b) and (f). It proposes that section 226.6(b) set forth the broad requirements for the information which institutions must include in their applications, and that section 226.6(f) specify the frequency with which the institution would be required to update the information contained in its original application.

On September 26, 1995, we issued updated guidance pertaining to the multi-year application renewal option. This guidance gave State agencies an opportunity to implement the statutory changes prior to publication of a regulation, and also enabled them to eliminate from their applications any unnecessary or duplicative information which renewing institutions were previously required to submit. That guidance also provided State agencies with broad parameters for determining how often they need to require institutions to submit updated information concerning various aspects of the institution's Program operations.

Most of the provisions of that guidance are being proposed without change in this rule.

Second, current Program regulations at sections 226.6(b), 226.6(f), 226.7(g), 226.15(b), 226.16(b) and 226.23(a) all establish various requirements for Program applications. We propose to consolidate these requirements so that State agencies and institutions may more easily refer to them in the regulations during the application process.

Third, we also believe it is useful to differentiate between the application requirements for ''new'' and ''renewing'' institutions. It is appropriate to recognize these distinctions since institutions applying to enter the Program for the first time, or to re-enter the Program after a lapse in participation, should be evaluated on a different basis than those which have been participating for some time. Even greater attention needs to be paid to first-time applicants and applicants re-entering the Program after a lapse in participation, so that they will successfully operate the Program from the start.

We believe that the need to ensure that new applicants are brought into the Program successfully is best served by a regulation which establishes specific minimum requirements for applications submitted by *new* institutions, but which allows State agencies to largely manage the continued participation of *renewing* institutions through the application renewal process in the manner they see fit. Therefore, this rule proposes very specific application requirements for *new* institutions. However, for *renewing* institutions, this rule proposes to specify only that the reapplication be evaluated on the basis of the institution's ability to operate the Program properly, efficiently, and effectively as documented in its management plan (if the institution sponsors child care facilities), its administrative budget, and its prior record in operating the Program. The proposed revisions to section 226.6(f) would specify those information elements which institutions would be required to update on a regular basis, regardless of the duration of time which the State agency allows an application to be in effect.

Fourth, and finally, the results of OIG audit activity have convinced us that State agencies must be explicitly required to consult the seriously deficient list when reviewing any institution's application for participation. In several instances, OIG found that an institution or individual which had been terminated from CACFP for cause and placed on the seriously deficient list by one State was subsequently admitted to participation by another State. Thus, we are proposing to add regulatory language requiring that a State agency consult the seriously deficient list, and deny the application of any institution or individual on the list, whenever it reviews any institution's application to participate.

Accordingly, this proposed rule would remove the requirements for application content and the application process found at section 226.6(b)(1)–(10), section 226.6(f)(2) and (3), section 226.15(b), and section 226.23(a); add definitions of ''new'' and ''renewing'' institutions to section 226.2; revise and reorganize sections 226.6(b) and (f); and make other changes to relocate, revise, or delete the requirements of these and other parts of the current regulations, as follows.

Won't a shorter Program application give State agencies less information about the institutions whose potential ability to operate the Program is being assessed?

No. Although some may view less frequent applications and fewer application requirements as contrary to this proposal's stated intent to improve Program management, we do not believe that streamlined, multi-year application procedures for renewing institutions will impede State agencies' ability to improve Program management. In fact, the less frequent processing of renewal applications, coupled with the elimination of unnecessary information on the application, should allow State agencies to devote more time to evaluating applicant institutions' potential ability to operate the Program properly, efficiently, and effectively, especially through review of the administrative budgets submitted by all institutions and the management plans submitted by sponsoring organizations of homes and/or centers.

What specific application requirements are in the current regulations?

Section 226.6(b) of the current regulations establishes the broad State agency requirements governing the annual application process for institutions and for the facilities on whose behalf sponsoring organizations apply. As part of the annual application/re-application process, an institution must currently:

- Renew its Program agreement;
- Submit current enrollment and free and reduced price meal eligibility information [centers only];
- Submit enrollment information and an assurance that providers' own children enrolled in the Program are eligible for free and reduced price meals [sponsoring organizations of family day care homes only];
- Issue a nondiscrimination policy statement and media release;
- Submit a management plan [sponsoring organizations only];
- Submit an administrative budget;
- Submit documentation that child care facilities are in compliance with licensing/approval requirements;
- Submit documentation that they are in compliance with the requirements pertaining to receipt of Title XIX or Title XX benefits [proprietary centers only];
- Indicate a preference for commodities or cash-in-lieu of commodities [centers only]; and
- Indicate a preference to receive all, part or none of an advance payment.

Current section 226.6(b)(10) also requires State agencies to:

- Notify institutions within 15 calendar days of receipt of an incomplete application;
- Provide technical assistance to institutions which submitted an incomplete application; and
- Approve or disapprove applications within 30 calendar days of receipt of a complete application.

Current sections 226.6(f)(1)–(3) and 226.7(g) expand upon the requirements of sections 226.6(b)(1), (5), and (6) by describing the information to be included in the Program agreement and the management plan, and by establishing requirements pertaining to the State agency's review and approval of the administrative budget. Current section 226.15(b) reiterates the annual institution application requirements set forth in section 226.6(b) and requires that nonprofit institutions submit evidence of their tax exempt status in accordance with section 226.15(a). Current section 226.16(b) reiterates the annual application requirements pertaining to institutions which are sponsoring organizations of child care facilities, and section 226.23(a) requires that each institution submit, and State agencies approve, a free and reduced price policy statement to be used in all child care and adult day care facilities under the institution's supervision as part of the annual application process.

What changes to the current requirements does this rulemaking propose, and why?

Current section 226.6(b), introductory paragraph and (b)(1): Program agreement—

First, all references to the agreement under the current introductory

paragraph to section 226.6(b) would be removed; current section 226.6(b)(1) would be removed and replaced with a new section 226.6(b)(1); and the specific requirements pertaining to agreements which appear at current section 226.6(f)(1) would be relocated to a new section 226.6(b)(2) dealing with agreements.

Second, the basic requirement that State agencies establish an application process, and the general requirements of that process, would be included in the introductory text of proposed section 226.6(b)(1).

In addition, the introductory text would require State agencies to establish a reapplication process and to meet the statutorily mandated deadlines for review of an institution's application. However, this paragraph would only specify that applications be in effect for a maximum of 36 months. Otherwise, State agencies would be free to establish their own reapplication requirements, provided that the requirements of section 226.6(f)—which would specify the timeframes for submitting and re-submitting documentation of compliance with specific Program requirements, as discussed below—are met.

Proposed section 226.6(b)(1)(i) would contain the minimum requirements for new applicants, and would include most of the required elements of the application set forth at current section 226.6(b)(1)–(10), modified slightly as discussed below, as well as the specific language regarding the content of the sponsor's management plan found at current section 226.6(f)(2). The modifications to the wording of the requirements set forth in current section 226.6(b)(1)–(10) are necessitated by the distinctions being drawn in this proposal between new applicants and renewing institutions; these specific items will now only be required of new applicants. In addition, current section 226.6(b)(10), which makes the institution's ''choice to receive all, part, or none of the advance payment'' a part of the application, must be modified due to Pub. L. 104–193's elimination of the requirement that State agencies make advance payments available to Program institutions upon request.

Proposed section 226.6(b)(1)(ii) would require State agencies to establish procedures for reviewing the applications of *renewing* institutions no more than annually and no less than every three years. The proposed rule would allow State agencies to determine the remaining content of the renewal application, provided that institutions continue to update Program information elements as set forth in the proposed revision to section 226.6(f).

As noted previously, under this proposed revision to the application process, State agencies would continue to be responsible for distributing to, and collecting from, participating institutions certain Program information and data, and for ensuring that the CACFP is being operated in compliance with all regulatory requirements. In this proposed rule, these additional State agency responsibilities for information collection or dissemination outside of the application process are grouped into three paragraphs within revised and reorganized section 226.6(f), ''Miscellaneous responsibilities''. Section 226.6(f)(1) would delineate responsibilities, including the collection or distribution of certain information, which State agencies would be required to perform annually; section 226.6(f)(2) would list State agency responsibilities to be performed at least once every three years; and section 226.6(f)(3) would enumerate those State agency responsibilities which could be complied with at intervals established at the State agency's discretion, though not more frequently than annually.

Current section 226.6(b)(2): Child care center requirements pertaining to free and reduced price eligibility

The current regulations at section 226.6(b)(2) require that centers submit current free and reduced price eligibility information annually. This requirement would be relocated to proposed section 226.6(b)(1)(i)(A), and new independent centers and new sponsors of centers would continue to be required to submit such information to the State agency with their initial application. In addition, collection of this information by the State agency would be required annually at proposed section 226.6(f)(1) to enable the State agency to use this information to construct an annual claiming percentage or blended rate for each participating child care center in accordance with section 226.9(b) of the current regulations. In States where the administering agency mandates the ''actual count'' method for centers, such information would already be submitted on a monthly basis.

Current section 226.6(b)(3): Family day care home sponsoring organization requirements for submission of enrollment information—

Current section 226.6(b)(3) requires sponsors of family day care homes to annually provide aggregate enrollment information for the homes they sponsor and to confirm the eligibility of providers' children for free and reduced price meals. Under this proposed rule, these requirements would be maintained for new sponsoring organizations of family day care homes at revised section 226.6(b)(1)(i)(B), in that sponsors would be required to provide an estimate of their annual aggregate enrollment for planning purposes; State agencies could include or exclude this requirement from sponsoring organizations' renewal applications. The specific data reporting requirements pertaining to tier I and tier II homes and meals, which are currently found at section 226.6(f)(11), have been included in proposed section 226.6(b)(1)(i)(B) as a required part of the application for new family day care home sponsoring organizations, and current section 226.6(f)(11) is proposed to be deleted. These data reporting requirements would only be included in proposed section 226.6(f)(1) indirectly, insofar as the estimated number of homes and children enrolled would be an integral part of the institution's budget which the State agency would collect annually in accordance with proposed section 226.6(f)(1)(vi). The fact that this information will be collected monthly on the FNS–44 form, starting in Fiscal Year 2000, means that sponsoring organizations would far exceed this requirement.

Current sections 226.6(b)(4), 226.15(b)(5), and 226.23(a): Nondiscrimination policy statement and media release—

Current sections 226.6(b)(4) and 226.15(b)(5) require the ''issuance of a nondiscrimination policy statement and media release'' as part of the annual application. The wording of this requirement at proposed section 226.6(b)(1)(i)(C) will be altered slightly to require that each new institution submit its free and reduced price policy statement, its nondiscrimination policy statement, and a copy of its media release announcing the Program's availability at participating child care facilities. Because section 722 of Pub. L. 104–193 prohibited institutions from being required to re-submit the policy statement unless it was substantively changed, section 226.6(b)(1)(ii) would prohibit State agencies from requiring resubmission unless the institution has made substantive changes to the statement. However, all institutions would continue to be required, at proposed section 226.6(f)(1), to annually submit to the State agency documentation that they had issued a media release which informed the public of the Program's availability, and State agency collection of the nondiscrimination statement would be done on an ''as needed'' basis (i.e., only when the institution made substantive changes to its free and reduced price

policy) under proposed section 226.6(f)(3). Because these requirements would now be located at proposed section 226.6(f), the current requirements at section 226.15(b)(5) would be removed. Finally, the current requirement at section 226.23(a) for the institution to submit its free and reduced price policy statement with its application would be revised to conform to the new requirements of Pub. L. 104–193.

Current section 226.6(b)(5): Sponsoring organization management plans—

The current requirement at section 226.6(b)(5), under which sponsoring organizations must annually submit a management plan as part of their application, would be moved to proposed section 226.6(b)(1)(i)(D), governing the submission of applications by new institutions, as would the substance of current section 226.6(f)(2), which details the specific elements which must be included in a sponsor's management plan. Because it is such a critical document in establishing a sponsoring organization's ability to perform its Program responsibilities, this rule also proposes to specifically require an updated management plan to be part of sponsoring organizations' renewal applications. Because of this proposal to require submission of a current management plan with the renewal application, we propose to leave more frequent updates of the plan to the State agency's discretion if the State agency has chosen to take applications less frequently than annually and to include the management plan update requirement at revised section 226.6(f)(2), meaning that the State agency would be required to collect the amended plan from sponsors no less frequently than every three years.

The only portion of the management plan which would require annual updating would be the sponsoring organization's administrative budget, as discussed in the next paragraph of this preamble. Of course, justification for changes to a sponsoring organization's budget assumptions might also require amendments to other portions of the management plan dealing with staffing, projected growth or decline in the number of providers sponsored, or other factors.

Current sections 226.6(b)(6) and 226.15(b)(3): Institutions' administrative budgets—

Current sections 226.6(b)(6) and 226.15(b)(3) require that institutions annually submit administrative budgets with their application. Current sections 226.6(f)(3) and 226.7(g) require the State agency to:

- Review and approve administrative budgets;
- Limit the allowable administrative costs of family day care home sponsoring organizations to the administrative costs in their approved budgets; and
- Establish administrative cost limits for other institutions [*e.g.*, independent centers and sponsors of centers] as it sees fit.

This proposed rule would continue to require, at proposed sections 226.6(b)(1)(i)(E) and (b)(1)(ii), that both new and renewing institutions submit administrative budgets for State agency approval with their applications. In addition, this rule proposes at section 226.6(f)(1) that revised budgets be submitted for State agency review and approval by all sponsoring organizations each year, and at proposed section 226.6(f)(3) that the administrative budgets of independent centers be submitted as frequently as the State agency deems necessary. [**Note:** routine adjustments to annual budget projections are reviewed by State agencies for all CACFP institutions on an ongoing basis, in accordance with section 226.7(g)]. Finally, the reference to ''annual'' budgets currently found in section 226.7(g) would be deleted, since budgets for independent centers would no longer be required on an annual basis. However, all budgets, whenever submitted, would be required to demonstrate the institution's ability to manage Program funds in accordance with this Part, OMB circulars, FNS Instruction 796–2, and the Department's Uniform Financial Management Requirements.

Our September 26, 1995, guidance concerning application requirements permitted institutions which sponsored only centers to submit budget revisions every three years. However, due to concerns raised by OIG in the Kiddie Care audits regarding the amount of administrative costs claimed by some sponsors of centers, this rule proposes to require *all* sponsoring organizations (whether of homes and/or centers) to resubmit their entire budget for annual review by the State agency. The 1995 guidance remains in effect until such time as the Department issues a final version of this proposed rule, but the Department encourages State agencies to review the administrative budgets of center sponsors on a more frequent basis than was required in the 1995 guidance.

Finally, to underscore the importance of the State agency's review of the institution's budget, we propose to specifically state that all approved costs in the budget shall be necessary, reasonable, allowable, and allocable in accordance with Department financial management regulations, OMB circulars, and the CACFP Financial Management Instruction. The audits conducted by OIG revealed State agency budget review to be a particular weakness in a number of States, and it is important to emphasize the purpose of the budget review and the budget amendment process in the regulatory text itself.

Current sections 226.6(b)(7), 226.15(b)(4), and 226.16(b)(3): Licensing and Approval Information—

The current application requirements at sections 226.6(b)(7), 226.15(b)(4), and 226.16(b)(3) require documentation of licensing or approval to be submitted each year. As previously noted, section 17(d)(2)(B) of the NSLA requires that State agencies exercising the option to take applications at other than annual intervals are nevertheless required to ''*confirm* on an annual basis that each such institution is in compliance with the licensing or approval provisions of [section 17(a) of the law].'' (emphasis added) Therefore, this rule continues to require (at section 226.6(b)(1)(i)(F)) that facilities submit documentation of their licensure or approval. The Department also proposes that revised section 226.6(f)(1) include the requirement that State agencies annually obtain from institutions or facilities the licensure or approval status of any facility which is required to be licensed or approved.

However, with regard to this requirement, the Department wishes to stress that this system would not necessarily have to include the submission of the same ''hard copy'' paper documentation year after year. Some State CACFP agencies have made arrangements with the State licensing agency to provide them with computerized updates, either by providing a list of all licensed facilities or by notifying the CACFP State agency on an ''exception'' basis of any child care facility whose license/approval has lapsed or been terminated. The Department encourages such arrangements in the interest of reducing administrative burden, while maintaining Program integrity and statutory and regulatory compliance.

Current sections 226.6(b)(7) and 226.15(a): Tax-exempt status information—

Current regulations at section 226.6(b)(7) and 226.15(a) require institutions to document their tax-exempt status as part of their application. This requirement would be retained for new sponsors at proposed section 226.6(b)(1)(i)(G). However, we

propose to place the periodic resubmission of such documentation at the State agency's discretion at revised section 226.6(f)(3).

Public Law 105–336 amended the provision which allowed institutions to participate after they had applied for, but before they had officially received, their tax-exempt status. Subsequently, Public Law 106–224 removed this provision from the law entirely, meaning that only institutions which have received their tax exempt status under the Internal Revenue Code of 1986 are permitted to participate. This change will be addressed in a second rulemaking.

Current sections 226.6(b)(8) and 226.15(b)(6): Proprietary center requirements—

Current regulations at sections 226.6(b)(8) and 226.15(b)(6) set forth the application requirements for proprietary centers. Such centers are permitted to participate in a given month only if at least 25 percent of their licensed capacity or enrolled participants receive funding under Title XX of the Social Security Act (42 U.S.C., section 1397, *et seq.*) The requirement that a new applicant proprietary center document its eligibility would be retained at proposed section 226.6(b)(1)(i)(H). However, no similar requirement would be included for renewing institutions at proposed section 226.6(b)(1)(ii) since, as a condition of their eligibility, such centers are required to document compliance with the 25 percent requirement each month. Therefore, this rule proposes to place the periodic resubmission of such documentation at revised section 226.6(f)(3), since the State agency is already receiving this information on a monthly basis as part of the claiming process.

Current sections 226.6(b)(9) and 226.6(f)(5)–(6): Information on commodities—

The current application requirement at section 226.6(b)(9) under which institutions are to indicate their preference for commodities or cash-in-lieu of commodities would be included in the requirements for new applicants at proposed section 226.6(b)(1)(i)(I) and in proposed section 226.6(f)(3) as a general State agency responsibility. This would provide State agencies with the flexibility to allow institutions to change the initial statement of preference submitted with their original application on an ''as needed'' basis. The requirement for annual submission of this information by institutions at current section 226.6(h) would be deleted by removing the first sentence and by making conforming changes to the remainder of the paragraph.

The current provisions at sections 226.6(f)(5)–(6), which require that State agencies determine institutions' preferences with regard to receiving commodities or cash-in-lieu of commodities and make available information regarding foods available in plentiful supply, have been relocated in this proposed rule into revised section 226.6(h), which addresses State agencies' overall responsibilities relating to commodity distribution.

Current section 226.6(b)(10): Advance payment information—

The current application requirement at section 226.6(b)(10) governing the institution's election to receive advance payments would be relocated in a new section 226.6(f)(3)(vii) as a general State agency responsibility. As previously noted, section 708(f) of Pub. L. 104–193 amended section 17(f) of the NSLA (42 U.S.C. section 1766(f)) by making payment of advances optional at the State agency's discretion. Because a State agency could elect to issue no advance payments whatsoever, this proposed rule would remove all references to advances at proposed section 226.6(b)(1).

Current section 226.15(b)(1): Demonstration of nonprofit status—

The current application requirement at section 226.15(b)(1) pertaining to the annual demonstration of nonprofit status reiterates the requirement at section 226.15(a) that all but proprietary institutions must demonstrate their nonprofit status. As already mentioned above, we are proposing to relocate this requirement at new section 226.6(f)(3) as a general State agency responsibility, to be reviewed by the State on an ''as needed'' basis.

Current section 226.6(f)(4): Procurement requirements—

Current section 226.6(f)(4) requires State agencies to annually determine that all meal procurements with food service management companies are in conformance with bid and contractual requirements of section 226.22. Because this is an annual requirement on State agencies and has nothing to do with the institution application process, this rule proposes to incorporate the requirement into revised section 226.6(j) dealing with ''Procurement provisions.''

Current sections 226.6(f)(7)–(10): Other State agency responsibilities—

This proposed rule would relocate current sections 226.6(f)(7)–(10), which deal with State agency responsibilities regarding information made available to pricing programs, the conduct of verification, and implementation of the two-tiered reimbursement system for family day care homes. Current sections 226.6(f)(7), (f)(9), and (f)(10) would be relocated at proposed section 226.6(f)(1)(i)–(iii), since they relate to information which the State agency must provide annually to some institutions. Current section 226.6(f)(8), which relates to the State agency's collection of verification as part of an administrative review, would be moved to proposed section 226.6(f)(3)(viii), which would require that verification be conducted as part of State agency reviews of institutions conducted in accordance with section 226.6(l).

Accordingly, we propose to reorganize and revise sections 226.6(b) and 226.6(f) as described above; to make conforming changes, as necessary, to current sections 226.15(b) and 226.16(b); and to revise current sections 226.6(j), 226.7(g), and 226.23(a), as described above.

What do the current regulations say with regard to Program agreements?

Under the current regulations at sections 226.6(b)(1) and 226.6(f)(1), renewal of an institution's Program agreement is required as part of the annual reapplication process. These provisions were established prior to the change to section 17 of the NSLA which now gives State agencies the option to take applications from participating institutions no less frequently than every three years.

The law requires that State agencies have the option of renewing applications every three years; what does the law state regarding the length of an institution's agreement?

The NSLA has never specified the duration of the Program agreement between the State agency and the institution. Recently, however, section 102(d) of Pub. L. 105–336 amended section 9(c) of the NSLA (42 U.S.C. section 1758(c)) by requiring State agencies which administer any combination of the child nutrition programs (*i.e.*, the National School Lunch, School Breakfast, Child and Adult Care Food or Summer Food Service Programs) to enter into a single permanent agreement with a school food authority which administers more than one of these programs. The law is still silent with regard to the length of the agreement between the State agency and non-school institutions.

What is the Department proposing with regard to the length of the Program agreement for non-school institutions?

Consistent with section 17(d)(2) of the NSLA (42 U.S.C. section 1766(d)(2)), which permits State agencies to take applications every three years, we propose that Program agreements for

non-school institutions should run for between one and three years. Thus, this proposed rule continues to link the length of the Program application and agreement for non-school institutions, while requiring State agencies to enter into permanent agreements with institutions which are schools and which, in accordance with Pub. L. 105–336, operate more than one child nutrition program administered by the same State agency. This proposed rule would continue to require that any Program agreements covering more than one Federal fiscal year stipulate that the agreement is contingent in subsequent fiscal years upon the availability of Federal funds and would, under the circumstances described in the discussion of renewal applications above, also permit the State agency to renew the institution's agreement for less than one year, pending the completion of a review of the institution by the State agency.

Accordingly, this rule proposes to amend sections 226.6(b), 226.6(b)(1) and 226.6(f)(1) by removing all references to the Program agreement, and by establishing a new section 226.6(b)(2), as described above, covering all Program agreements.

B. State Agency Notification to Applicant Institutions

Prior to 1996, what were the legal requirements regarding a State agency's handling of an institution's application to participate in CACFP?

There were three requirements in section 17(d)(1) of the law. State agencies were required to:

- Notify institutions in writing of their approval or disapproval within 30 days.
- If an incomplete application was submitted, notify the institution in writing within 15 days.
- If an incomplete application was submitted, ''provide technical assistance, if necessary, to the institution for the purpose of completing its application.''

What changes to these requirements have been enacted, and how are these changes reflected in this proposed rule?

First, section 708(c) of Pub. L. 104–193 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 amended section 17(d)(1) by removing the requirement that State agencies provide an institution with technical assistance when the institution submitted an incomplete Program application. However, the elimination of the statutory requirement did not eliminate the State agency's responsibility to assist applicants; rather, it emphasized the institution's need to take primary responsibility for the initiation of its program.

Accordingly, the Department proposes to amend current section 226.6(b)(10) [proposed section 226.6(b)(1)(iv)] by removing the requirement that State agencies provide technical assistance to institutions submitting incomplete applications, and replacing that with language recommending that State agencies provide this assistance.

Second, with regard to the law's requirement that State agencies notify an institution within 15 days of its submission of an incomplete application, we have observed that, as State agencies experience increased workloads and simultaneous staff reductions, it has become difficult for them to meet this requirement. Since the law has been amended to allow State agencies to take applications every three years, we now believe that it is necessary to provide State agencies with additional time to review *all* applications, and that the up-to-30-day period now prescribed by the law provides a more reasonable amount of time for State agencies to review the application to determine if it is complete and, if it is, to approve or deny it. Renewing institutions would, of course, continue to participate in the Program during the State agency's review of their application.

Therefore, we proposed to amend section 17(d)(1) of the law by eliminating the requirement that State agencies notify institutions that their applications are incomplete within 15 days of receipt. This concept was included in the Administration's 1998 child nutrition reauthorization proposals and later incorporated in H.R. 3666. Ultimately, this concept was included in section 107(d) of Pub. L. 105–336, which amended section 17(d)(1) to require that a State agency notify an institution of its approval or denial ''within thirty days after the date the complete application is received.'' Thus, a State agency has 30 days from its initial receipt of a complete application to either approve or deny the application. The conference report accompanying the bill (H. Report 105–786, October 6, 1998) encouraged State agencies to inform applicants as quickly as possible if their application is incomplete.

Accordingly, this rule proposes to further revise current section 226.6(b)(10) [proposed section 226.6(b)(1)(iv)] to allow States to notify applying institutions of their approval or disapproval within 30 days of receiving a complete application.

II. State Agency and Institution Review and Oversight Requirements

What were OIG's recommendations for changes to the monitoring requirements?

As discussed above, OIG's national audit of the family day care home component of CACFP made a number of recommendations for changes to the current State agency and sponsoring organization monitoring requirements. Among these were recommendations to require that:

- Some or all sponsor reviews of day care homes and State agency monitoring visits to homes be unannounced;
- Routine parental contacts be made as part of the State agency and sponsor monitoring of day care homes in order to verify children's Program participation;
- Sponsors and day care providers keep more detailed information on enrollment forms, including a record of each child's normal hours of care and normal places (*i.e.*, at day care, school, or home) of receiving meals throughout the day;
- Minimum sponsor review requirements—including reconciliation of enrollment, attendance, and meal claim data—be established;
- Sponsors routinely perform certain ''edit checks'' on all meal claims submitted by their facilities; and
- Minimum standards for State agency review coverage be established.

After the release of this national audit, OIG informally recommended that the Department:

- Address the matter of placing seriously deficient child care facilities (family day care homes and child care centers) on a list of seriously deficient facilities, much as the Department currently maintains a list of seriously deficient institutions; and
- Give State agencies explicit regulatory authority to limit the transfer of family day care home providers from one sponsoring organization to another.

Finally, the ''Operation Kiddie Care'' audit made an additional recommendation related to sponsor monitoring—that the regulations prescribe a maximum number of family day care homes for which each sponsor monitor would have responsibility.

What is FNS's response to these recommendations?

We largely concur with these recommendations and believe that their implementation will aid our ongoing efforts to improve Program management.

However, those audit recommendations which are now statutorily mandated as a result of the enactment of Pub. L. 106–224 (specifically, those dealing with unannounced visits, seriously deficient facilities, provider transfer limits, and sponsor monitoring staff) will be addressed in a second rulemaking.

Does FNS believe that OIG's recommended changes should apply to sponsored centers as well?

Yes. Although OIG's 1995 audit and recommendations applied specifically to the family day care component of CACFP, many of these findings should be extended to sponsored centers as well. Portions of the ''Operation Kiddie Care'' audit pointed to problems with sponsored centers that, in our opinion, can be addressed by extending some of our regulatory proposals for home sponsors to sponsors of centers as well. In addition, the owner and director of a large sponsor of child care centers were recently convicted of fraud and other felonies for illegally obtaining millions of dollars from CACFP. Coupled with the fact that the center component of the Program still accounts for over 40 percent of CACFP's annual expenditures of roughly $1.6 billion, this case and other recent review and audit findings demonstrate that there is a compelling need for better monitoring and controls in sponsored centers as well.

Will FNS propose a similar extension of the new monitoring requirements to independent centers or the adult day care component of CACFP?

To date, we have not had significant audit or review findings which would indicate the existence of similar problems in these types of institutions. Therefore, we do not believe it is necessary to propose all of these changes for all types of institutions and facilities. The preamble and regulatory text will differentiate between those changes which we propose to apply to all facilities or institutions, and those which we propose to apply to a subset of institutions or facilities.

Aren't CACFP institutions facing new resource constraints? Won't they have difficulty implementing some of these proposed review requirements?

Yes, many CACFP institutions face funding and resource constraints. For example, as a result of the enactment of Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, sponsors of family day care homes were required to implement a new, two-tiered system of reimbursement to their providers. That system (which was implemented in an interim rule published at 62 FR 889 (January 7, 1997) and further refined in a final rule published at 63 FR 9087 (February 24, 1998)), went into effect on July 1, 1997, and required family day care home sponsoring organizations to engage in a broad range of new administrative responsibilities.

The cumulative impact of this ''tiering'' system and the changes proposed in this rulemaking will be significant for some family day care home sponsoring organizations. Therefore, we believe that it is necessary to find ways to focus regulatory requirements pertaining to sponsors' reviews of their facilities to increase efficiency and improve Program compliance. Our proposals for changes to the current requirements pertaining to institution monitoring of sponsored facilities appear in Part II(F) of this preamble.

Finally, we are also proposing other modifications to the current monitoring requirements for sponsored child care centers and outside-school-hours care centers These changes are intended to streamline Program administration and to provide CACFP administrators with additional flexibility in the use of their monitoring resources. The proposed changes are also discussed in Part II(F) of this preamble.

A. Household Contacts

What did the OIG audit say about household contacts?

OIG's audit of family day care home sponsoring organizations revealed that fewer than one in six currently make parental contacts a part of their normal provider reviews. They recommended that household contacts be made a routine part of a sponsoring organization and/or State agency's review protocols in order to confirm their child's enrollment and attendance, and the specific meals routinely received by the child, at the family day care home being reviewed. Such contacts can serve to establish the accuracy and completeness of the provider's claims for reimbursement by identifying providers who inflate meal claims, either by claiming meals for a child not in attendance or by claiming service of a particular meal at times of the day when the child is not in care (*e.g.*, the child routinely eats breakfast at school or at home, not at the day care home).

Is USDA proposing to require that sponsoring organizations or State agencies make household contacts?

Only under certain specific circumstances.

We do not agree that household contacts should be made routinely. In addition to being extremely time-consuming when it proves difficult to contact a household, we have concerns regarding the privacy of households with children in care and the efficacy of using this technique on a routine basis. Since households with children in care rarely have contact with representatives from the sponsoring organization, it seems less likely that they would be willing to respond to telephone inquiries regarding their children's care arrangements.

At the same time, we are deeply concerned with OIG's finding that ''block claiming'' (*i.e.*, claiming the same number and type of meals served every day) by child care facilities often goes unchallenged by their sponsoring organizations. We therefore believe that, in order to deter the type of fraud documented in recent audits and investigations, it is necessary to propose that, under certain circumstances, household contact be a required part of sponsoring organization and State agency reviews of child care facilities.

Under what circumstances does USDA propose to require that sponsoring organizations make household contacts?

We propose to require that, when facilities claim the same number and type of meals served for ten or more consecutive days, or claim an unusually high number of meals for more than one day in a claiming period, sponsoring organizations contact at least one half of the households of children in care at that facility (not including family day care providers' households when their children are in care) for the purpose of verifying their children's enrollment and attendance and the specific meal service(s) which those children routinely receive in care.

We realize that using this 10-day claiming ''trigger'' could alert unscrupulous providers, and cause them to ''block claim'' their meals for a period of less than 10 days. We are therefore proposing additional language which encourages sponsoring organizations to utilize household contacts whenever they note suspicious claiming patterns by their sponsored facilities, and not only in the two circumstances described above which *require* household contacts.

Accordingly, we propose to add a new paragraph, Section 226.16(d)(5) entitled ''Household Contacts'', which specifies the circumstances under which sponsoring organizations would be required to contact one-half of the households of children in care in a sponsored facility, excluding the

provider's household in a family day care home. This paragraph would also encourage the use of household contacts whenever sponsors note suspicious claiming patterns by their facilities.

We further propose to require that sponsoring organizations observe the following guidelines in making household contacts:

(1) Household contacts should be made in writing or by telephone. If a sponsor chooses to contact a household by telephone, it would be required to first notify the household in writing that they should expect a call from a particular sponsor employee for the purpose of verifying their children's receipt of meals in day care. This notice would also provide written assurance that any information provided will be confidential and that the sponsor will only use the information for Program purposes.

We believe that these precautions will help to address possible parental concerns regarding the provision of information about their child's day care schedule, and will also allow the sponsoring organization some flexibility in determining which method of household contact is likely to yield a higher and more accurate rate of response. Public Law 106–224 requires that households with children in CACFP-supported child care facilities receive information about CACFP, along with the name and address of the sponsor and State administering agency, from either the sponsor or the facility. Prior receipt of this information should help parents understand that their provider receives Federal reimbursement for meals served to their children, and that that may be contacted by the State or local administering agency to verify their children's participation and attendance. The requirement to inform parents about CACFP will be addressed in a subsequent rule which addresses the changes mandated by ARPA.

(2) If contact cannot be made with *one-quarter* of the selected households in a center or with *all* of the selected households in a family child care home, *or* if any of the households in the sample fails to support the validity of the provider's claim, the sponsoring organization must make an unannounced visit to the sponsored center or home within one week, in order to review the validity of the facility's meal counting and claiming procedures.

Although Public Law 106–224 mandated the use of unannounced visits by sponsoring organizations, it did not specifically consider the use of unannounced visits as a way of ''following up'' on the results of household contacts. We believe, however, that the use of an unannounced visit under this circumstance will be an effective means of establishing the validity of a provider's, or a sponsored center's, monthly claim.

What if households do not respond to the written or telephone inquiries? How will the sponsor meet its requirement to contact a particular number of households if some households refuse to respond?

We recognize that parents may not respond to the sponsor's inquiry and that, in cases of ''ghost children'' (*i.e.,* fictitious children), no parent exists to be contacted. Thus, in some cases, factors beyond the sponsoring organization's control would prevent it from contacting the requisite number of households. Therefore, this rule will propose to count an unsuccessful contact toward meeting the required number of households to contact if the sponsoring organization makes two documented attempts at contact over a two-week period. Because the household contact requirement was triggered by a suspicious meal claiming pattern, we would still require that an unannounced visit take place if a center sponsor could not contact one-quarter of the selected households in their sample, or if a home sponsor could not contact all of the households in its sample.

Accordingly, this rule further proposes to add to Section 226.2 a definition of ''household contact'' and to further amend new Section 226.16(d)(5). Both of these sections would require adherence to the procedures described in the paragraphs above whenever household contacts are utilized.

How many households will a sponsoring organization usually be required to contact?

It depends on the type of facility which the organization sponsors.

In the case of sponsoring organizations of family day care homes, the average CACFP home serves only seven or eight children, including the provider's own (Source: ''Early Childhood and Child Care Study'', 1997). Excluding the provider, a requirement to contact one-half of the households of children in care would usually entail contact with between two to three households, depending on the number of provider's children in care and the number of households with more than one child in care at the home.

In the case of sponsored CACFP child care centers, which average about 66 enrolled children (Source: ''Early Childhood and Child Care Study'', 1997), the requirements for household contact would probably be in the neighborhood of 15–20 households, again depending on the number of households with more than one child in care at the center. However, this increased workload is commensurate with the increased risk of Program abuse and financial loss to the government if a center is not accurately reporting its meal claims.

Under what circumstances does USDA propose to require that State agencies make household contacts?

This rule also proposes to require that State agencies include some level of parental contact in their reviews of sponsored day care homes or centers when, as part of their review of the sponsoring organization's records, they detect block claiming or inordinately high meal counts. As with the household contact requirement described for sponsors in the preceding paragraphs, we are proposing that State agencies be required to contact one-half of the households of children in a sponsored child care facility (excluding the provider's own children in a family day care home) when one of these claiming patterns is detected. The purpose of this requirement would be to deter fraudulent claims for ''ghost'' children by providers, centers, or sponsors, a practice found by OIG in a disturbing number of its audits. Like sponsoring organizations, unannounced State agency visits to the facility would be triggered if one-quarter of the households selected in a sponsored center, or any of the selected households in a family day care home, could not be contacted, or if any of the households contacted failed to corroborate the facility's meal claim. We propose that the procedures for the conduct of household contacts by a State agency be identical to those described above for household contacts made by sponsoring organizations. Finally, in order to ensure that sponsors are properly implementing these requirements, this rule also proposes that State agencies be required to include a review of a sponsor's records of household contact as part of its normal review of a sponsor.

Would State agencies also be required to conduct household contacts if suspicious claiming patterns were discovered in an independent center?

Yes. Although OIG attention has focused on sponsoring organizations and their facilities, the same potential for improper claiming exists among

independent centers. If a State agency review or its edit check of a claim reveals block claiming or an unusually high meal claim for one or more days, this will also trigger a requirement for household contact by the State agency.

Accordingly, this rule would further amend proposed sections 226.6(l)(2) and 226.6(l)(4) by adding the requirement that State agency reviews of institutions include a review of the institution's conduct of household contacts. This rule proposes to further amend section 226.6(l)(4) to require that State agencies make household contacts under the same circumstances, and utilizing the same procedures, as those described for sponsoring organizations.

B. Enrollment Forms

What are the current regulatory requirements pertaining to children's enrollment forms?

Current regulations at sections 226.15(e)(2) and (3) require that each institution keep a record of each child's enrollment and copies of all income eligibility forms used to establish a child's eligibility for free or reduced price meals in child care centers or tier I reimbursements in mixed tier 2 family day care homes. Current section 226.16(a) specifically extends these requirements to sponsoring organizations, while sections 226.17(b)(7), 226.18(b) and (e), 226.19(b)(8), and 226.19a(b)(8) state that child care centers, family day care homes, outside-school-hours care centers, and adult day care centers, respectively, must maintain documentation of enrollment for each Program participant.

What did the OIG audit find regarding enrollment forms?

In its audit of family day care homes, OIG noted several serious problems related to the information contained on enrollment forms. The most serious of these involved inaccurate meal counts for breakfasts and suppers. OIG noted that daily meal counts were often inflated by claiming that children regularly received a breakfast or supper in care when, in fact, that meal was normally received elsewhere. In addition, OIG noted that, in many of the family day care homes reviewed, enrollment forms which parents are required to complete when their child enters care were often inaccurate, out-of-date, or incomplete. The audit attributed these problems to shortcomings in the current regulatory requirements pertaining to enrollment forms.

What regulatory changes did the OIG audit recommend?

The audit noted that there is no current requirement that enrollment forms be updated on a regular basis or that they contain an indication that the child's parents have seen the form and verified its accuracy. OIG also noted that other useful information—such as a record of each child's normal hours of care and the place (*i.e.,* at day care, school, or home) where each child normally receives each meal service throughout the day—is not required to be on the enrollment forms. The audit recommended that enrollment forms be updated annually, be signed by parents, and include information which would enable reviewers to verify the number of children enrolled and in attendance at the home, and the number and type(s) of meals normally consumed by each child.

What action has the Department taken in response to these recommendations?

To address these concerns, we have developed and distributed to State agencies an optional prototype enrollment form to be signed by the child's parent or guardian and updated at least annually. The prototype includes information not currently required on the enrollment form, such as normal days and hours of care and the meals to be received at the family day care home and at school, where applicable.

Although this rule does not propose requiring that this prototype be used, it does require that all enrollment forms capture certain information which will allow reviewers to compare the data on the enrollment forms to attendance records and meal claims. Specifically, this rule proposes to require that the enrollment form include the child's normal hours in care and the meals usually received in care by that child, and that the form be updated annually and signed by a parent at each update. We believe that requiring this information on all enrollment forms will improve Program management by facilitating reviewers' comparison of current enrollment against attendance records and meal claims. In addition, based on the findings of recent audits and investigations, we believe that these new requirements should also be extended to enrollment forms kept on file for children in child care centers.

Accordingly, we propose to amend sections 226.15(e)(2) and (3) to require that all enrollment forms be signed by a parent, be updated annually, and include information on each child's normal days and hours of care and the meals normally received in care. We are also proposing that identical changes regarding the content of enrollment forms be added to sections 226.17(b)(7), 226.18(e), and 226.19(b)(8)(i). Finally, this rule proposes to amend the first sentence of section 226.18(e) to clarify that family day care homes, like all other types of facilities participating in the Program, must retain enrollment records for each child in care.

C. Standard Review Elements Required for Sponsor Review of Facilities

What are the current regulatory requirements pertaining to sponsor monitoring?

Current regulations at section 226.16(d)(4) require sponsors to review centers or homes at least three times per year, but do not specify the areas to be covered during the review.

What were OIG's general suggestions regarding sponsoring organization monitoring requirements?

In addition to the recommendations for unannounced visits and household contacts discussed above, OIG also made three more general suggestions intended to improve sponsor monitoring of family day care homes:

- Requiring that each sponsoring organization review of a family day care home cover certain basic elements of Program management (such as recordkeeping, attendance at training, and menus), including a reconciliation of enrollment and attendance records with provider meal claim data;
- Requiring each sponsoring organization to hire enough staff to adequately perform the monitoring function, and to express ''adequate monitoring staff'' in terms of a number of homes which a monitor could reasonably be expected to oversee; and
- Using routine computerized or manual edit checks to detect errors when processing their facilities' monthly meal claims.

The first of these recommendations is addressed in this section of the preamble, while the third is addressed in section II(D) below. It should be noted with respect to the first of these recommendations that, although FNS Instruction 786–5, Rev. 1 (''Provider Claim Documentation and Reconciliation'', November 8, 1991), establishes that sponsoring organizations should reconcile meal claims submitted by family day care home providers with enrollment and attendance records, it does not establish how often such reconciliations should be done; does not require that they be part of the normal review process; and

does not state that they should be utilized in reviews by sponsors of child care centers.

What has USDA done in response to the recommendation concerning the second OIG recommendation: that USDA establish staffing standards for the monitoring function performed by sponsoring organizations of family day care homes?

Because that recommendation is also included among the statutory changes required by Pub. L. 106–224, it will be addressed in a separate rulemaking which will include other changes required by the new law.

What has USDA done in response to the recommendation concerning standard review elements?

We have developed separate optional prototype forms for use by sponsoring organizations in monitoring their sponsored family day care homes and child care centers. Before the development of these prototype review forms, there was only one prototype review form (FNS 345–1) for all facilities participating in CACFP. Based on input from OIG and Program administrators, we have concluded that the current review form is not sufficient to identify inflated meal counts and other significant Program problems. The 1995 audit recommended that a more detailed prototype be developed which would detect material Program weaknesses at child care facilities.

Although this proposed rule does not require CACFP sponsors to employ the prototype review forms, we have made the forms available to State agencies and will require that, if State agencies or sponsors wish to develop different review forms, they include, at a minimum, a review of compliance with Program requirements pertaining to licensing or approval; health, safety and sanitation; attendance at training; day of review meal service; meal counts; meal pattern requirements; and menu and meal records. In addition, we propose to further amend section 226.16(d)(4)(i) to require that each review of a sponsored facility include an assessment of whether the facility has corrected problems noted on the previous review(s).

With regard to the recommendation for reconciliation of meal claims with attendance and enrollment records, this rule proposes to require that each on-site review include a thorough examination of the meal claims recorded by the facility for at least five days of operation during the current or previous claiming period. For each day examined, reviewers must use enrollment and attendance records to determine the number of children in care during each meal service and to compare these numbers to the numbers of breakfasts, lunches, suppers, an/or supplements claimed for that day. Based on that comparison, the reviewers must determine whether the claims were accurate. If there is a discrepancy between the number of children enrolled or in attendance on the day of review and prior claiming patterns, the reviewer must attempt to reconcile the difference and determine whether the establishment of an overclaim is necessary. In addition, after the on-site review has been conducted, the sponsoring organization must analyze the review findings to determine whether household contacts, as defined in the proposed definition at section 226.2, should be initiated to determine the validity of providers' previous meal claims. As with other proposed changes, we also believe that these changes should be applied to sponsors of child care centers as well as to sponsors of family day care homes.

Accordingly, we propose to further amend section 226.16(d)(4)(i) to require that sponsors' reviews of child care facilities include an assessment of: licensing or approval; health, safety and sanitation; attendance at training; day of review meal service; meal pattern requirements; menu and meal records; and compliance with the requirements pertaining to the annual update and content of enrollment forms. A facility review must also include a thorough examination of the facility's meal claims and a determination, based on the procedures described above, of whether the claims were accurate. In addition, we propose to further amend section 226.16(d)(4)(i) to require that each review of a sponsored facility include an assessment of whether the facility has corrected problems noted on the previous review(s).

Does this rule propose any additional changes to the requirements governing the content of sponsoring organizations' reviews?

Yes. We are proposing two additional changes to clarify the minimum requirements for sponsors' reviews of facilities.

The first change would require that at least one of the sponsor's annual visits include the observation of a meal service. We understand that many States and sponsoring organizations already include the observation of a meal service in *all* facility reviews. By proposing this requirement, we do not wish to discourage this practice. However, this proposed requirement will ensure that all sponsors observe at least one meal service per year at each facility and will provide additional scheduling flexibility to sponsors which are conducting more in-depth facility reviews . This proposal underscores our desire to ensure that the nutritional, as well as the fiscal, integrity of the meal service is being properly monitored.

Accordingly, we propose to further amend section 226.16(d)(4)(iii) by adding the requirement that at least one review per year at each sponsored facility include the observation of a meal service.

Second, we are proposing a slight alteration to the current requirements regarding meal counts. The current regulations at section 226.15(e)(4) require institutions to keep ''[d]aily records indicating the number of participants in attendance and the number of meals, by type (breakfast, lunch, supper, and supplements) served to participants.'' However, this requirement has been broadened in FNS Instruction 796–2 (''Financial Management—Child and Adult Care Food Program'') to require that ''point of service meal counts'' be taken in all child care facilities. Although we believe that point of service counts are crucial for the conduct of institutional meal service in schools, they are not really feasible in all child care facilities. For child care centers, we propose to require that meal counts be taken at the *time of meal service;* for family day care homes, which serve meals to a limited number of children whose attendance varies only slightly from day to day, counts may be taken either at the time of meal service or at another time during the day.

This clarification is being proposed in recognition of the realities of conducting home-based day care. The needs of the children in home-based child care are often more immediate and compelling than the need to record a meal count, meaning that it may not be feasible for a day care home provider to record meal counts at the time of meal service. Centers, on the other hand, generally conduct meal service in a way which facilitates time-of-service counting. Any delay in taking the meal count in a center would inevitably lead to estimates and errors due to the larger number of children typically being served. At the same time, we wish to *strongly* emphasize the need to require that, at a minimum, day care home providers record meal counts on a *daily* basis. One of the most serious and persistent problems noted by OIG was a failure to record meal counts until a full week, or even a month, after the fact. Therefore, we also wish to re-emphasize

to sponsor and State agency reviewers of day care homes that meals served prior to the day of review must be disallowed for reimbursement when they have not been recorded as of the day of review.

Accordingly, we are proposing to amend sections 226.11(c)(1), 226.15(e)(4), and 226.17(b)(8) to require time of service meal counts in child care centers. No change is proposed to section 226.18(e), which requires *daily* meal counts in family day care homes, but the Department does propose to explicitly require daily meal counts for family day care homes at sections 226.13(c) and 226.15(e)(4). The Department will later revise FNS Instruction 796–2 to clarify that daily meal counts (not point of service counts) are required in family day care homes and that meals served prior to the day of review may not be included in the claim for reimbursement when they have not been recorded by the time that the review is conducted.

D. Meal Claim Edit Checks

What regulatory requirements now exist to help ensure that the claims being submitted by facilities accurately reflect their actual meal service?

Section 226.10(c) of the current regulations requires all institutions to report claims information in accordance with the State agency's financial management system and in sufficient detail to justify the amount of reimbursement claimed. However, these regulations establish no specific procedures which sponsors must utilize to determine the validity of facility claims, or which State agencies must utilize to determine the validity of institutions' claims.

What are edit checks?

Edit checks are methods of comparing the information that appears on a claim for reimbursement with other information about the claiming facility's normal operations (*e.g.,* enrollment, attendance, approved meal types) in order to help determine the claim's validity. An edit check by itself may identify erroneous claims, but more often will identify claiming patterns which raise ''red flags'' for those reviewing the claim (that is, areas calling for a closer examination and followup prior to payment of the claim). For example, one common edit check would be to compare the total number of meals claimed by a facility to the product of the number of children enrolled at the facility, times the number of serving days in the month, times that facility's number of approved meal services per day.

What were OIG's findings regarding claim edit checks?

OIG's audit of the family day care home component found that very few sponsoring organizations make use of claim edit check techniques. In several cases, day care homes routinely claimed the maximum number of meals for each child each month, or regularly claimed weekend meal service, without being questioned or reviewed by their sponsor. In most other cases, sponsors performed a single edit check (*e.g.,* comparing meals claimed against enrollment) which was not sufficient to detect many significant errors in the claiming process.

What is the Department doing in response to this finding?

We share OIG's concerns. Therefore, we are proposing that sponsors be required to perform routine edit checks of monthly claims prior to submitting their consolidated claim to the State agency for payment.

Specifically, we are proposing that sponsoring organizations be required to perform edit checks in order to detect and minimize inaccurate or fraudulent meal claims. Edit checks must:

- Verify that the facility has been approved to serve the types of meals claimed;
- Compare the number of children enrolled for care (taking an expected rate of absences into account) to the number of meals claimed; and
- Detect block claiming (*i.e.*, no daily variation in the number of meals claimed).

Edit checks must be performed for every day meals are claimed by a facility. Meal claims which cannot be reconciled with enrollment (taking an expected rate of absences into account) must be subjected to more thorough review to determine if the meal claims were accurate. The expanded amount of enrollment information proposed in Part II(B) of this preamble will allow sponsoring organizations to perform the meal claim edit checks which this rule proposes to require. In addition, we encourage State agencies to develop, and require the use of, any other edit checks they deem appropriate.

In summary, this rule proposes to require two types of meal claim reviews:

- The five-day reconciliation of claims to enrollment and attendance data which will be accomplished during an on-site review, and which may be followed up with household contacts by the sponsoring organization; and
- The monthly meal claim edit checks performed by the sponsor when preparing its consolidated claim for reimbursement, and which will often be part of the sponsor's automated claims processing system.

Both of these meal claim reviews will help to identify and resolve potential problems in facilities' meal claiming patterns. These internal controls in the payment process are being proposed in order to curtail the type of routine over-claiming of meals which OIG has reported in both of its national audits.

Thus, this rule proposes to require that the reconciliation of meal counts against enrollment and attendance occur during on-site facility reviews, as discussed in section II(C) of this preamble, and whenever sponsors analyze their facilities' monthly meal counts as part of the sponsoring organization's claims preparation process. This system of internal controls in the payment process is necessary in order to curtail the inappropriate payments identified in the OIG audit and in other recent audit and review activity. Because many sponsors utilize computerized claim processing, and some will need to update their systems to reflect these proposed requirements, the final rule implementing this change would provide for some period of time during which sponsoring organizations could reprogram their claims payment systems.

Accordingly, we propose to amend sections 226.10(c), 226.11(b), and 226.13(b) to require that, prior to submitting their consolidated monthly claim to the State agency, sponsoring organizations compare facilities' meal claims against the most recent information on enrollment, licensed capacity, total days of operation, attendance patterns, and authorized meal services, for each meal type being claimed on each day of operation.

Are State agency edit checks of institutions' claims needed as well?

Yes. Management evaluations have recently revealed several instances in which State agencies lack edit checks when processing institutions' monthly claims. In one instance, a State agency had made payments for suppers served when no facilities sponsored by that institution were approved to serve suppers. In another instance, the total number of meals claimed by an institution and paid for by the State agency in that month exceeded the product of operating days times children times approved meal types. For that reason, we believe it is also necessary for State agencies to employ edit checks when processing institutions' claims.

What are USDA's proposals regarding State agency edit checks?

At a minimum, State-level edit checks should ensure that payments are made only for authorized meal types, and that increases in the number of facilities claiming meals, or the total number of meals being claimed, are consistent with the sponsoring organization's report of new facilities entering the Program and the number of serving days in the month (*Note:* section 226.16(b)(2) and (3) require sponsoring organizations to submit to the State agency an application to participate, as well as documentation of licensure or approval, for each child and adult care facility which it sponsors).

We recognize that not all family day care homes claim Program meals each month, and that there will therefore be a normal monthly fluctuation in the number of meals being claimed by a sponsor. Nevertheless, it is reasonable to require that State agencies establish certain ''flags'', or indicators, in their automated claims processing systems which will alert them to the possibility of erroneous claims and trigger further efforts by the State agency to establish the claim's accuracy.

Accordingly, we are proposing to revise section 226.7(k) to require State agencies to establish and utilize edit checks when processing claims.

E. Minimum State Agency Review Elements

What are the current regulatory requirements pertaining to State agency reviews of institutions?

The current regulations governing State agency reviews of institutions are located at section 226.6(l). This section addresses the frequency of State agency reviews and requires that they ''assess institutional compliance with the provisions of this part and with any applicable instructions of FNS and the Department.'' However, current regulations do not specify the broad subject areas to be examined in these reviews, nor do they mandate any specific tests to determine the validity of meal claims.

What were OIG's findings and recommendations regarding State agency monitoring requirements?

OIG found that State agencies' reviews of family day care home sponsoring organizations and day care home providers ''generally did not include sufficient tests to identify recordkeeping deficiencies and inflated meal claims, and to assess the adequacy of sponsor monitoring of [day care homes].'' We believe it is necessary to propose changes to existing review requirements in order to ensure a consistent, minimum national standard of State-level review of institutions.

What has USDA done in response to these recommendations?

We have developed new prototype forms for State agency review of child care institutions (sponsoring organizations, independent child and adult care centers, independent outside-school-hours care centers, and proprietary title XIX and XX centers). These forms include sections covering required Program documents on file, facility licensing or approval, meal counts, administrative costs, sponsor training and monitoring of facilities, observation of meal service, and other Program requirements. This rule does not propose requiring State agencies to utilize these particular forms in conducting their reviews of participating institutions. However, State agencies will need to review their forms in order to ensure that the new minimum review requirements are captured on their review forms.

Accordingly, we propose to further amend section 226.6(l)(3) to require that each State agency review of an institution also include State review of a sample of sponsored facilities in order to compare enrollment records, attendance records, and day-of-review meal counts observed during sponsor reviews to meal counts submitted by the facility on its monthly claim. In addition, this rule proposes to require that State agency reviews of institutions include a review of: required Program documents on file; documentation of facility licensing or approval; meal counts; administrative costs; sponsor training and monitoring of facilities; and observation of meal service.

F. Review Cycle for Sponsored Facilities

What are the current requirements for sponsoring organization review of facilities?

The current regulations at section 226.16(d)(4) establish the requirements for sponsoring organization reviews of their facilities. Specifically, the regulations establish separate minimum requirements for facility reviews by sponsors of child and adult day care centers, family day care homes, and outside-school-hours care centers.

The current regulations governing the review of sponsored centers and homes are similar in most respects. Both require that:

- The sponsored facility (except for outside-school-hours care centers) be reviewed three times per year;
- No more than six months elapse between reviews; and
- New facilities be reviewed during the early stages of their operation.

However, there are some differences in the current requirements for reviewing different types of sponsored facilities:

- New *homes* are currently required to be reviewed in their first four weeks of operation, whereas new sponsored *centers* are to be reviewed during their first six weeks of operation;
- With State agency approval, sponsoring organizations of family day care homes are currently permitted to review each home an *average* of three times per year, meaning that they may devote a greater share of their review resources to the review of new or problem day care home providers, provided that the average number of annual visits per home is at least three. This allows family day care home sponsors more flexibility than sponsors of centers; and
- Sponsored outside-school-hours care centers are required to be reviewed six times per year although the Department on January 11, 1993, issued guidance reducing this to three times per year for school-sponsored outside-school-hours care centers.

What changes are being proposed in this rule?

We believe that different requirements for reviews of different types of sponsored facilities are not warranted. We are therefore proposing that sponsoring organizations of any type of facility be required to:

- Review each of its sponsored facilities three times per year;
- Allow no more than six calendar months between reviews; and
- Review each new facility within its first four weeks of Program operation.

We also believe that *all* sponsoring organizations (not just sponsors of family day care homes) should have greater flexibility in their conduct of reviews. Due to the additional sponsor responsibilities being proposed in this rule, and the new administrative requirements resulting from the implementation of ''tiering'' in the family day care component of the Program, we believe that sponsors need greater flexibility in order to better target and utilize their monitoring resources. We are therefore proposing that, if two facility reviews in a review cycle have been conducted without uncovering substantive problems (*e.g.*, non-compliance with the meal pattern,

missing or inaccurate meal counts, submission of inaccurate claims, failure to keep required records, or a provider's unexplained absence), the sponsor should have the option of either not conducting a third review of that facility or of using the third review solely as an opportunity to conduct training at the facility. We also propose that sponsoring organizations be allowed to employ this option without State agency approval, provided that the average number of annual visits per home is three. This proposed change will allow sponsoring organizations the flexibility to target their reviews to newer facilities or facilities with a history of operational problems, as they see fit, while ensuring that there is no reduction in the sponsor's overall monitoring efforts.

Accordingly, we propose to further amend section 226.16(d)(4) to:

- Make uniform the basic requirements for sponsors' review of all of their child and adult care facilities, regardless of the type of facility being reviewed;
- Permit sponsors to waive a third review at a facility, or to use the third review solely for on-site training, if the sponsor has conducted two reviews of the facility during the review cycle without discovering substantive problems; and
- Allow all sponsors to conduct an average of three reviews per facility per year across their sponsorship (*i.e.*, the third review at one facility could be deferred in favor of performing an additional review at a facility experiencing more Program problems).

G. Disallowing Payment to Facilities

What were OIG's recommendations with regard to disallowing payments to facilities?

The OIG audit of the family child care component of CACFP found that, in some instances where a provider had submitted claims for reimbursement for meals served to absent or nonexistent children, they still received Program payment for these meals. The audit stated ''that State agencies and sponsors may be reluctant to disallow payments and/or request repayment of total meal claims made during a period when it was determined that a [day care home] * * * claimed meals [fraudulently] for absent and/or nonexistent children'' due to the wording of the current regulations at section 226.10(f). That section states that, ''If a State agency has reason to believe that an institution or food service management company has engaged in unlawful acts with respect to Program operations, evidence found in audits, investigations, or other reviews shall be a basis for non-payment of claims for reimbursement.'' According to OIG, this passage's failure to mention child and adult care facilities, as well as institutions and food service management companies, discouraged some State agencies and sponsors from withholding or recovering funds which had been improperly paid to facilities.

We believe that State agencies and sponsors of child or adult care centers and/or day care homes clearly possess the authority to deny payment for improper claims, either at the time of submission or retroactively, in accordance with the sponsor-facility agreement, which requires the facility to operate the CACFP in accordance with Program regulations. When meals are served which do not conform to Program requirements, or when inaccurate claims are submitted, the State agency and sponsor have the authority and the responsibility to disallow payment for those meals.

Nevertheless, we are aware that some State appeals officers are reluctant to uphold disallowances when the regulations do not specifically require such action on the part of the administering agency. This may be the case in section 226.10(f), which specifically mentions ''institutions and food service management companies'' without mentioning facilities.

Therefore, we are proposing to amend section 226.10(f) to specify that facilities participating in CACFP shall have claims denied when audits, investigations, or other reviews reveal that they have claimed meals for absent or nonexistent children, claimed meals which did not meet the meal pattern, or otherwise engaged in unlawful acts with respect to Program operations.

H. Change to Audit Requirements

What change is the Department proposing?

We are updating the language of the regulations at section 226.8(a) to reflect recent changes to government-wide auditing rules.

What are the changes to these government-wide auditing rules?

The current regulations at section 226.8(a) state that, unless exempt, State- and institution-level audits must be carried out in accordance with Office of Management and Budget (OMB) Circulars A–128 and A–110 and with 7 CFR Part 3015, the Department's Uniform Federal Assistance Regulations. However, audit requirements for States, local governments, and nonprofit organizations can now be found in OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations'', and the Departmental regulations at 7 CFR Part 3052. These requirements apply to audits of State agencies and institutions for fiscal years beginning on or after July 1, 1996.

Accordingly, we propose to update the references at section 226.8(a).

What, if any, substantive changes have occurred in the audit requirements for State and local governments and for private nonprofit organizations?

State agencies have already been informed of these changes. The most significant changes involved the threshold for the conduct of audits, which was raised from $25,000 to $300,000 and the express prohibition on using Federal funds for audits not required by 7 CFR Part 3052. That means that, if an institution expended less than $300,000 in total Federal resources (which includes both CACFP operating and administrative reimbursements, as well as the value of USDA commodities), it is now exempt from the Federal requirement to have an organization-wide audit or, in some cases, a program-specific audit.

In addition, the Department is proposing two changes to sections 226.8(b) and (c) which will bring those sections into conformance with the Department's regulations at 7 CFR Part 3052. Specifically, we propose to revise the language at section 226.8(b), which describes the circumstances under which a State agency may make a portion of audit funding available to institutions for the conduct of organization-wide audits, to reference the new Departmental regulations governing such funds use. Also, we propose to revise the language at section 226.8(c), which describes the circumstances under which the State agency may use audit funds for program-specific audits, to clarify that the funds may also be used for agreed-upon procedures engagements, as described at 7 CFR Part 3052.230(b)(2).

What rules govern audits for proprietary institutions?

The current regulations state that proprietary (for-profit) institutions not subject to organization-wide audit requirements must be audited by the State agency at least once every two years. Our policy has been to exempt proprietary institutions from this requirement if they received less than $25,000 per year in Federal Child Nutrition Program funds. Institutions were (and still are) also required to comply with the audit requirements of all other Federal departments or

agencies from which they receive funds or other resources.

Now, Departmental regulations at 7 CFR Part 3052.210(e) provide State agencies with the authority to establish audit policy for proprietary institutions. Given the cost of these audits, we believe that States should raise the audit threshold for proprietary centers above the previously-established $25,000 figure.

Accordingly, we propose to further amend section 226.8(a) with regard to audits of proprietary institutions; to amend the language at section 226.8(b) to include references to Departmental regulations governing the funding of organization-wide audits; and to amend the language at section 226.8(c) to clarify that 1½ percent audit funds may also be used for agreed-upon procedures engagements, as described at 7 CFR Part 3052.230(b)(2).

I. Income Eligibility of Family Day Care Home Providers Based on Food Stamp Participation

What did the Operation Kiddie Care audit reveal regarding family day care home providers claiming income eligibility on the basis of food stamp participation?

The Operation Kiddie Care audit also uncovered problems regarding the CACFP participation of family day care home providers whose income eligibility is based on participation in the Food Stamp Program. OIG sampled 24 providers in two States who claimed reimbursement for meals served to their own children based on their food stamp participation (NOTE: These findings were developed by OIG prior to the July 1, 1997, implementation of the two-tiered reimbursement system for family day care home providers). Of these 24 providers, OIG determined that 14 had not revealed, or had understated, their self-employment income from providing child care. In these cases, the provider either should have received a lower food stamp allotment, or would have been ineligible to receive food stamps at all. In some cases, this would also have prevented them from claiming reimbursement for meals served to their own children in CACFP.

Since the implementation of tiering, the fiscal consequences of underreporting child care income are potentially far greater. Providers qualify to receive Tier I rates for reimbursable meals served to all children in their care if they live in an eligible, low-income area, or if their household income is at or below 185 percent of the Federal income poverty guidelines. Providers claiming income eligibility on the basis of food stamp participation are only required to provide their name and food stamp case number to their sponsor in order to receive the higher, Tier I benefit for all children in their care. Furthermore, although sponsoring organizations are required to verify the information submitted by providers claiming Tier I eligibility based on income, there are no verification requirements, *per se*, for a provider claiming eligibility on the basis of food stamp participation. Therefore, if providers are improperly receiving food stamps, and if their actual household income exceeds 185 percent of the Federal income poverty guidelines, they would not be eligible to receive tier I reimbursement for CACFP meals served to all of the children in their care.

What did OIG recommend to address this problem?

The Kiddie Care audit recommended that FNS take steps to minimize the possibility of this improper claiming of food stamp and CACFP benefits. In a number of cases, the office making the food stamp eligibility determination had been unaware that the household included a day care provider. Therefore, OIG recommended that sponsors share information concerning CACFP providers claiming eligibility on the basis of food stamp participation with the State agency, which would then provide the information to the State agency administering the food stamp program. In this way, food stamp eligibility offices would know which households included an individual self-employed as a CACFP day care home provider, and would be better able to discern the household's actual income. If some of these households were determined to be ineligible to receive food stamps, they would then be required to submit income eligibility statements detailing their household income, including their child care income and expenses, in order to qualify for tier I benefits in CACFP.

What is FNS proposing in this rule?

We agree with this recommendation. We are therefore proposing to add, effective 6 months after issuance of the final rule, a requirement that sponsoring organizations of family day care homes provide to the State agency a list of all of their sponsored providers who qualify for tier I eligibility on the basis of food stamp participation. Within 30 days of receipt, the State agency would be required to provide this information to the State agency responsible for the administration of the Food Stamp Program. Once this information was provided to the State Food Stamp agency, they are required, under 7 CFR Part 273.12(c) to use the information in determining the household's food stamp eligibility. That information will be available to FNS for review during the normal course of conducting management evaluations, and review of the State agency's implementation of this requirement will be included in our Management Evaluation guidelines.

Accordingly, we propose to amend revised section 226.6(f)(1) by adding a new paragraph, (x), requiring that State agencies annually collect from each sponsoring organization of family day care homes a list of day care home providers qualifying to receive tier I benefits on the basis of their participation in the Food Stamp Program. This proposed new paragraph will also require State agencies to share this information with the State agency administering the food stamp program within 30 days of receipt.

III. Training and Other Operational Requirements

As discussed in the ''Background'' section of this preamble, OIG's national audit of family day care homes made recommendations for changes to the current requirements for the training of day care providers by sponsoring organizations. Specifically, OIG recommended that the CACFP regulations be strengthened to require that all participating child care providers attend a minimum number of hours in Program and child care training each year, and that minimum content requirements be established for such training. Current section 226.18 requires that the agreement between a sponsoring organization and a family day care home provider include a statement of the sponsor's responsibility to train the day care home provider; however, this provision has, in some cases, been interpreted to mean that training must be offered to day care home providers, and not that providers are actually required to attend the training. OIG also recommended that sponsor monitors receive, at a minimum, training on the same content areas provided to sponsored facilities.

We are also proposing a number of other miscellaneous changes that have been suggested by Program administrators in recent years. These include:

- Giving State agencies the authority to place restrictions on meal service times;
- Providing State agencies with greater flexibility on payment procedures for new child care and outside-school-hours care centers;

• Stating expressly that State agencies are required to issue and enforce the provisions of all Program guidance issued by FNS;

• Stating expressly that sponsoring organizations of family day care homes may neither use temporarily nor retain any portion of providers' food reimbursement, except as specified in section 226.13(c); and

• Eliminating obsolete language with regard to the participation of adult day care centers.

A. Training Requirements for Sponsored Facilities and Sponsor Monitors

What are the current regulatory requirements for sponsor training of facility staff?

The current regulations at section 226.15(e)(11) require institutions to maintain records which document:

• The date(s) and location(s) of all training sessions conducted;

• The topics covered at the session(s); and

• The attendees at each training session.

In addition, sections 226.16(d)(2) and (3) require sponsors to provide training to all sponsored child and adult care facilities in Program duties and responsibilities *prior* to beginning Program operations, and to provide additional training sessions not less frequently than annually afterwards. These requirements are designed to ensure that facility staff are familiar with Program requirements prior to beginning their work with CACFP, and that the staff of facilities participating in CACFP continue to receive additional training on a regular basis.

What were OIG's findings and recommendations with regard to facility training?

OIG found that compliance with these training requirements is not uniformly monitored and enforced by State agencies and institutions. Some CACFP administrators have interpreted current regulations to require that sponsoring organizations *offer* training to day care home providers, rather than requiring that the providers actually *attend* the training. In fact, section 226.18 is not entirely clear on this point; currently, the agreement between providers and sponsors must simply include a statement of the sponsor's responsibility to train the day care home's staff. OIG recommended that all participating family day care home providers receive a minimum number of hours in Program and child care training each year, and that sponsors and State agencies verify that providers receive training at least annually.

What does the Department propose in this rule?

We believe it is imperative that staff at sponsored child and adult care facilities *receive* training both before and during their CACFP participation. Therefore, we propose to clarify that day care providers are required to *attend* training prior to participation in the CACFP, and at least annually thereafter.

However, within these broad parameters, we also believe that it is necessary to provide State agencies with some flexibility in defining the format, content, length, frequency, and other aspects of the required training process. For example, some State agencies may wish to impose Statewide policies on how sponsors of centers and homes handle missed training sessions, or whether technical assistance provided during monitoring visits can be counted towards meeting minimum training requirements. Other State agencies may prefer to handle these matters on a case-by-case basis. Some State agencies may choose to require that facility staff receive training in the provision of ''quality child care,'' whereas others may be unwilling to mandate training not directly related to the CACFP. Finally, since State CACFP administrators will be familiar with what training requirements, if any, are imposed by their State licensing authorities, they will be in the best position to determine how CACFP training might complement any training provided to child care staff as a result of licensing-related or other State requirements.

Accordingly, we propose to amend sections 226.16(d)(2)–(3) to require that sponsors provide training to, *and* require the attendance of, key staff from all sponsored child care facilities in Program duties and responsibilities *prior* to the facility's participation in CACFP, and no less frequently than annually thereafter. We also propose to amend sections 226.17(b), 226.18(b)(2), 226.19(b)(7), and to add a new section 226.19a(b)(11), to clarify that key child care home, child care center and adult day care center staff (as defined by the State agency) are required to attend Program training prior to the facility's participation in CACFP, and at least annually thereafter, on content areas established by each State administering agency.

Will the Department establish requirements on training content to State agencies?

Recognizing that some State agencies will want to have Federal guidance on training, we have developed materials designed to help sponsors of child care facilities provide training on quality program operations. This guidance, entitled ''Guide to Provider Standards'' and ''Guide to Center Standards,'' can be used by State agencies and sponsors to measure the proficiency of facility staff in conducting their CACFP (and broader child care) responsibilities, and by sponsors to train facility staff in areas in which they may be deficient. The three standards established in the guidance are that facility staff:

• Comply with CACFP administrative requirements;

• Comply with CACFP meal service requirements and serve nutritious meals; and

• Promote the health, safety and well-being of the children in care.

This guidance was developed in a cooperative effort with State administrators and its use is strongly encouraged.

In addition, we are proposing in this rule that certain content be covered in the training of all sponsored child care facilities. Although we wish to provide as much flexibility as possible to State agencies, it is clear that all sponsored facilities must be thoroughly familiar with Program requirements if they are to properly operate the Program. These basic Program requirements must be included in all training of sponsored facilities:

• Serving meals which meet the CACFP meal patterns;

• An explanation of the Program's reimbursement system;

• Taking accurate meal counts;

• Submitting accurate meal claims, including an explanation of how the sponsor will review the facility's claims; and

• Complying with recordkeeping requirements.

Does the Department expect providers to receive the same training every year?

No, but we expect that even providers with long experience in CACFP can use ''reminders'' regarding these basic features of the Program. Although sponsors may want to design their training to experienced providers differently, a review of these Program features must be a part of every provider's annual training.

Don't sponsor monitors need the same training?

Yes. A sponsor monitor can hardly be expected to ensure Program accountability if he/she is not thoroughly familiar with these Program requirements. Therefore, we are also proposing that sponsor monitors receive the same training as providers, both before they begin their monitoring duties and on an annual basis thereafter.

Does the Department also propose to adopt the OIG recommendation to require that State agencies and sponsoring organizations verify that facilities have received training?

Yes. The OIG audit recommended that day care home sponsors and State agencies verify, at least annually, that participating providers actually received required training. As discussed in Parts II(C) and (E) of the preamble above, we have developed prototype sponsor and State agency review forms which include a section on verifying that appropriate facility personnel have received training in accordance with regulatory requirements. Although use of these prototype forms is optional, we propose to require that, at least once a year, sponsor reviews of all child care facilities include an assessment of compliance with training requirements and that State agency reviews of sponsors always include this component.

Accordingly, we propose to further amend section 226.6(l) to require that, as part of their administrative reviews, State agencies assess the compliance of sponsoring organizations with the training requirements set forth at section 226.16(d). In addition, we propose to further amend section 226.16(d) to require that at least annually, as part of a review, sponsoring organizations verify that one or more staff from each child care facility has attended the training offered by the sponsor and that these staff receive training on CACFP meal patterns, an explanation of the Program's reimbursement system, meal counts, the claims process and claim review, and Program recordkeeping requirements, before entering the Program and on an annual basis thereafter. Finally, we also propose to add a new paragraph, section 226.15(e)(15), which would require that sponsor monitoring staff be trained on these same content areas.

B. Times of Meal Service

What are the current restrictions on the time of meal service?

Except for outside-school-hours care centers, current regulations do not require that meals be served at particular times of day, or that a certain amount of time must elapse between meal services. Even for outside-school-hours care centers, the regulations place restrictions on the time of meal service for suppers only.

Who has asked for changes to these requirements?

In the past, some Program administrators have requested us to propose definite times of service for each meal type (*e.g.*, breakfasts only to be served between 6:00 and 9:00 AM), or to require that a certain amount of time elapse between meal services.

How has the Department responded to these requests?

We remain reluctant to establish such requirements on a national basis, for fear of restricting Program access. Single parents working the night shift, for example, often have tremendous difficulty finding suitable care for their children; it would be counterproductive to mandate rules that make it even harder for parents in this type of job situation to find appropriate, licensed or approved care for their children.

However, recent audits and reviews have found child care facilities which regularly serve apparently unnecessary meals in order to maximize their claims for reimbursement (*e.g.*, serving and/or claiming service of a snack at 4:30 and a supper at 5:45 to an after-school child who is to be picked up by a parent at 6). Therefore, we are concerned about the potential for Program abuse. Although the proposed requirement to provide more information about children's hours of care and meals received on enrollment forms (see Part II(B) of the preamble, above) and to conduct edit checks of enrollment forms against monthly claims (see Part II(D) of the preamble) will certainly help identify these practices, it will only do so during reviews or monthly reconciliations, *after* the meal has been inappropriately served and claimed.

What is the Department proposing?

We are sympathetic to State agencies' requests to have specific regulatory authority to impose limits on meal services. In States where Program reviews have uncovered patterns of abuse involving claiming of multiple meals to children in care for a brief amount of time, or where main meals such as breakfasts and lunches are routinely served only a short time apart, we wish to provide State agencies with appropriate tools for eliminating such mismanagement. In these circumstances, it is appropriate for State agencies to have regulatory authority to support their attempts to limit this type of abuse.

However, we ask State agencies to exercise care in implementing restrictions on meal service times that might limit the amount of quality care available to children whose parents work unusual hours or experience unique circumstances. In the example cited above, the child receiving a supplement at 4:30 p.m. may need one as soon as he arrives at day care if he ate lunch at school at 11:30 a.m.; similarly, he may also need to receive a supper prior to leaving care if his commute home is a particularly long one. In addition, homes and centers serving infants and toddlers may need to provide meals more frequently given these children's tendency to eat smaller portion sizes more frequently throughout the day. State agencies may wish to limit their use of this authority to particular sponsorships or particular facilities which have been found to be providing meals inappropriately to children.

Accordingly, we propose to add section 226.20(k), entitled ''Time of meal service'', to provide State agencies with the authority to require that child care facilities allow a certain amount of time between meal services or that meal services not exceed a specified duration. We further propose to redesignate current paragraphs (k)–(p) as (l)–(q), respectively.

C. Reimbursement to Institutions When Approved for Participation

What are the current rules pertaining to reimbursement of new institutions?

Current section 226.11(a) states that payment for meals served in child and adult care centers may only be made to institutions operating under an agreement with the State agency for meal types specified in the agreement. State agencies have the option to reimburse child and adult care centers for meals served in the calendar month preceding the calendar month in which the agreement is executed, provided that the center has records to document participant eligibility, the number of meals served, and that the meals met Program requirements. The State agency does not have a similar option with regard to reimbursing family day care homes for meals served prior to execution of an agreement.

Why is the Department proposing a change to this provision?

State agencies have expressed concern that the current regulation's wording limits their flexibility by:

• Setting up an expectation that centers will *always* be paid for meals served in the calendar month preceding execution of the agreement; and

• Not specifically citing the State agency's authority to *defer* payments for a period of time after the execution of an agreement with an institution and/or its facilities.

We did not intend to establish an expectation that new centers would always be reimbursed for meals served in the month prior to execution of their agreement. However, we do not agree with State agencies which wish to defer reimbursement to approved centers until *after* the date they sign the Program agreement. Rather, we believe the regulations should clarify that State agencies are required to begin reimbursing centers for meals when a Program agreement is signed and all Program requirements are being met.

Accordingly, we propose to add language to section 226.11(a) to clearly establish State agencies' authority to defer payment for meals served in centers until the day on which the center executes a Program agreement with the State agency.

D. Regulations and Guidance

Are State agencies required to ensure compliance with Federal guidance as well as regulations?

Yes. Section 226.6(l) makes State agencies responsible for monitoring institutions' compliance with Program regulations ''and with any applicable instructions of FNS and the Department.'' Although this requirement and case law have demonstrated that State agencies have the authority and the responsibility to apply Federal guidance which interprets the regulations and the law, we believe it is necessary to clarify this fact. Comparable regulatory language already exists in other programs, such as the Summer Food Service Program (see 7 CFR section 225.15(a)).

Accordingly, we propose to further amend section 226.6(l) to clarify State agencies' authority in this regard, and to add a new paragraph, section 226.15(m), which requires institutions to comply with all regulations, instructions, and guidance materials issued for the CACFP.

E. Sponsor Disbursement of Food Service Payments to Family Day Care Providers

What are the rules governing sponsors' disbursement of meal service payments to family day care homes?

The regulations at sections 226.13(c) and 226.18(b)(7) state that sponsoring organizations of family day care homes shall disburse the full amount of meal service earnings to providers, except that, with the provider's prior written consent, the sponsor may deduct the costs of providing meals or foodstuffs to the provider. In recent years, we have been asked whether the regulations would permit sponsors:

• To temporarily retain some portion of the providers' meal service payments; or

• With or without prior written consent, to subtract the costs of other goods or services (*e.g.,* liability insurance premiums, toys, or educational materials) provided to the family day care provider.

The intent of the current regulations is to *prohibit* any retention of meal service payments by the sponsoring organization, except in the single instance described in the regulations (a written agreement for the provision of meals or foodstuffs by the sponsor to the provider). We are well aware that sponsors often sell related goods or services to family day care home providers, including providers they do not sponsor. However, because sponsoring organizations of family day care homes are required to be public entities or to have nonprofit status under the Internal Revenue Code, such sales must generally be handled through a separately-incorporated proprietary subsidiary of the sponsoring organization. There is no reason for the government to facilitate proprietary transactions through the retention of food service payments provided under the CACFP. We intend there to be no exceptions save that specified in the current rule.

What if the sponsor retains the providers' payments temporarily?

This practice amounts to interest-free ''borrowing'' by the sponsor from the provider, and is prohibited by the regulations. Provider payments are not the property of the sponsor. Sponsors that improperly retain provider payments for any period of time have misappropriated these funds, in violation of the statute authorizing CACFP.

Accordingly, we propose to amend sections 226.13(c) and 226.18(b)(7) to further clarify the limitations on sponsoring organizations' temporary or permanent retention of meal service payments, except when it is expressly permitted by the regulation or permitted by the State agency due to questions concerning the legitimacy of the provider's claim.

F. Technical Change: Elimination of Obsolete Adult day Care Provision

Why is the Department proposing this change?

In 1988, Pub. L. 100–175, the Older Americans Act Amendments of 1987, permitted adult day care centers to participate in the CACFP under certain circumstances. Although the law was enacted on November 29, 1987, its provisions with regard to these centers' participation in CACFP were retroactively effective back to October 1, 1987. Therefore, we published an interim rule (53 FR 52584, December 28, 1988) which amended section 226.25 to establish the guidelines under which adult day care centers could claim reimbursement for meals served between October 1 and November 29, 1987. The sole purpose of these provisions was to deal with the one-time circumstance of making retroactive payments to adult day care centers.

Accordingly, we propose to remove section 226.25(g).

IV. Non-Discretionary Changes Required by Public Laws 104–193 and 105–336

What is a ''non-discretionary change''?

A ''non-discretionary'' change is a specific change to the regulations that is mandated by law. That is, if a law is enacted which eliminates one of the previously-reimbursable meal services in a child nutrition program, a Federal administering agency literally has ''no discretion'' with regard to whether it will change the regulations to implement the law and eliminate the meal service. If it fails to make this change, the Federal agency is in violation of the law.

Most of the other changes being proposed in this rule are ''discretionary'', in that they are designed to carry out the law's intent but were not specifically mandated by law. Thus, CACFP reimbursement must be made only for eligible meals served to participants, but the law does not specifically mandate that USDA ensure this by establishing a system of performance standards for institutions, as it proposed in Section I of this preamble.

Why is USDA including non-discretionary changes in a proposed rule?

Generally, because changes to the statute must be implemented in the regulations, non-discretionary changes are published in an ''interim'' or ''final'' regulation, which has the force of law upon publication. However, this

proposed rule includes a number of non-discretionary changes to the CACFP which were mandated by Pub. L. 104–193, the Personal Responsibility and Work Opportunities Reconciliation Act of 1996, and Pub. L. 105–336, the William F. Goodling Child Nutrition Reauthorization Act of 1998. Although not all of these changes relate to Program management, the primary focus of this rule, it is expedient to include these changes in this proposal.

Commenters are encouraged to respond to the specific way in which we are proposing to implement these changes, but are asked not to comment on the changes themselves, which we are required by law to incorporate into the Program regulations.

A. Issuance of Advances to Institutions Participating in CACFP

How did the law change the rules governing advance payments to institutions?

Prior to the passage of Public Law 104–193, section 17(f)(4) of the NSLA required State agencies to ''provide advance payments* * * * to each approved institution in an amount that reflects the full level of valid claims customarily received from such institution for one month's operation.'' Section 708(f)(2) of Public Law 104–193 amended section 17(f)(4) to make issuance of advances discretionary, at the State agency's option.

How does USDA propose to implement this change to the law?

We believe that the law intended to provide State agencies with broad discretion in this area, and that State agencies may choose one of a number of options. State agencies may choose to:

- Issue advances to all institutions;
- Issue advances to no institutions;
- Issue advances to those institutions with records of adequate Program administration; or
- Issue advances to one or more type(s) of institution (*e.g.,* issue advances only to independent centers).

However, we also believe that, if a State agency chooses the third or fourth option listed above, it must have valid reasons for distinguishing between types of institutions, or between individual institutions, to which it will/will not issue advances. We also wish to note that a State agency's decision to employ the third option (not to issue advances to one or more institutions due to their record in administering the Program) is an appealable action in accordance with section 226.6(k).

Accordingly, we propose to amend section 226.10(a) of the regulations to make State agency issuance of advances to institutions optional.

B. Change to Method of Rounding Meal Rates in Child Care and Adult Day Care Centers

How did the law change with regard to the method of rounding meal rates?

Section 704(b)(1) of Public Law 104–193 amended section 11(a)(3)(B) of the NSLA by changing the method to be used by the Department in making annual adjustments to the national average payment rate for paid meals served in the NSLP and SBP. This change also affected the method of rounding used to calculate the annual adjustment to the rate for paid meals served in child care centers and adult day care centers participating in the CACFP because, under sections 17(c)(1)–(3) and 17(o)(3) of the NSLA, these rates are linked to the rates and rounding methods established in section 11(a)(3)(B). Later, section 103(b) of Public Law 105–336 extended the same rounding procedure to the free and reduced price meal rates in NSLP, SBP, and the center-based component of CACFP, effective July 1, 1999.

Prior to this change, the Department rounded all meal rates paid to child and adult day care centers in the same manner. Each year, the previous year's rate was adjusted for inflation and then rounded up or down to the nearest one-quarter cent. This rounding methodology for meals served in centers is set forth in the regulations at section 226.4(g)(2). Public Law 104–193 changed this rounding method for meals served at the paid rate in child and adult day care centers by requiring that the unrounded amount for the preceding 12-month period be adjusted for inflation, then rounded down to the nearest whole cent. Later, Public Law 105–336 extended the same rounding procedure to the free and reduced price meal rates in NSLP, SBP, and the center-based component of CACFP, effective July 1, 1999.

Accordingly, this rule proposes to modify the language at section 226.4(g)(2) regarding the rounding of meals served in child and adult day care centers to conform to the requirements of Pub. Laws 104–193 and 105–336. In addition, this rule proposes to change the word ''supplements'' to ''meals'' at section 226.4(g)(2) of the regulations since this paragraph is clearly intended to describe the method of adjusting and rounding the rates for *all* meals (not just supplements) served in child and adult day care centers.

C. Elimination of the Aid to Families With Dependent Children (AFDC) Program

Perhaps the most significant change made by the Personal Responsibility and Work Opportunities Reconciliation Act of 1996 was the elimination of the Aid to Families with Dependent Children, or AFDC, Program. This Federally-run entitlement program was replaced by a series of State-run programs with different requirements, all funded under a Federal block grant called the Temporary Assistance to Needy Families (TANF) program.

What effect did this change have on CACFP?

In regulatory terms, this change had little impact on the Child Nutrition Programs. Section 109(g)(1)(B)(i) of Public Law 104–193 made conforming changes to the statutes governing the Child Nutrition Programs which required that households which were categorically eligible for free meal benefits in these programs by virtue of their AFDC recipiency would also be categorically eligible for free meals based on their receipt of TANF benefits.

Accordingly, we propose to remove the definition of ''AFDC assistance unit'' at section 226.2 and replace it with a definition of ''TANF recipient''. In addition, we propose to remove all references to ''AFDC assistance unit'', ''AFDC case number'', and all other references to ''AFDC'' throughout the Part 226 regulations and to replace them with references to ''TANF recipient'', ''TANF case number'', and ''TANF'', respectively.

D. State Agency Outreach Requirements

What changes did Public Law 104–193 make relating to Program outreach?

Section 708(a) of Public Law 104–193 amended the statutory ''purpose statement'' for CACFP by amending section 17(a) of the NSLA. Previously, the law had required us to assist States to ''initiate, maintain, and expand nonprofit food service programs for children in institutions providing child care.'' Section 708(a) deleted the words ''and expand'' from this sentence. In addition, section 708(h) of Pub. L. 104–193 revised section 17(k) of the NSLA in its entirety. Previously, this section of the law had required State agencies to ''facilitate expansion and effective operation of the Program'' and to annually notify each nonparticipating institution of the Program's availability, the requirements for participation, and the procedures for application. As a result of Public Law 104–193, this section of the law now requires State

agencies to ''provide sufficient training, technical assistance, and monitoring to facilitate effective operation of the program.''

Did this change eliminate outreach from the CACFP?

No. State agency outreach is still an allowable and desirable Program activity. Although Public Law 104–193 removed two specific requirements for State agency outreach, it nonetheless maintained, and even reinforced, the State agency's responsibility to foster Program expansion in low-income and rural areas.

Previously, Public Law 101–147 had made additional funds available to sponsoring organizations of day care homes for expansion into rural or low-income areas. Public Law 103–448 had permitted day care home sponsors to use their administrative funds to defray the licensing-related costs of non-participating low-income day care home providers. Public Law 104–193 underscored Congress' commitment to these provisions by mandating that we publish interim regulations implementing these changes and giving them the force of law, which was done in 1998 (63 FR 9721, February 26, 1998). Thus, although the specific requirement to notify non-participating institutions was removed, the law continues to promote program expansion among rural and low-income family day care home providers, and the regulations continue to require State agencies to perform outreach activities, especially in rural and low-income areas.

What changes to the rule is the Department proposing?

Accordingly, we propose to amend:

- Section 226.6(a) to require that State agencies continue to commit sufficient resources to facilitate Program expansion in low-income and rural areas; and
- Section 226.6(g), entitled ''Program expansion'', to eliminate the language requiring that State agencies take specific actions to facilitate expansion, while retaining the broader requirement that State agencies take action to expand the availability of Program benefits, especially in low-income and rural areas.

E. Prohibition on Payment of Incentive Bonuses for Recruitment of Family Day Care Homes

What change did the law make with regard to employee payments by family day care home sponsoring organizations?

Section 708(b) of Public Law 104–193 amended section 17(a)(2)(D) of the NSLA by prohibiting any family day care home sponsoring organization which employs more than one person from basing payment to employees on the number of family day care homes recruited.

Because these terms were not narrowly defined by Congress, we have broadly construed the terms ''employee'' and ''payment''. For example, sponsoring organizations often pay individuals (including family day care home providers whom they sponsor for CACFP) to perform specific program functions, such as training, monitoring, or recruitment. Although that person is not a full-time employee of the family day care home sponsoring organization, we nevertheless believe that they were intended to be covered by this prohibition. We also believe that Congress intended to prohibit any form of payments (including bonuses, free trips, or any other perquisite or gratuity) based solely on recruitment made to any full-time or part-time employee, contractor, or family day care home provider.

Can a family day care home sponsor still pay persons to perform recruitment functions?

Yes. The recruitment of family day care home providers to participate in CACFP is not prohibited. In fact, as noted in the previous section of this preamble, the law continues to encourage recruitment of new providers in low-income and rural areas. This means that family day care home sponsors are permitted to pay employees or contractors to perform recruitment functions. However, the person being paid cannot be reimbursed *solely* on the basis of the *number* of homes recruited. Similarly, including the number of homes recruited as an evaluation factor when measuring an employee or contractor's performance is permissible, whereas providing a bonus or award for recruiting a certain number of homes would not be permissible.

How does USDA propose to implement this change?

Accordingly, we propose to amend section 226.15 by adding a new paragraph (g) which prohibits sponsoring organizations of family day care homes from making payments to employees or contractors solely on the basis of the number of family day care homes recruited, and by redesignating current sections 226.15(g)–(k) as sections 226.15(h)–(l), respectively.

F. Pre-Approval Visits by State Agencies to Private Institutions

What change did the recent reauthorization make to the rules for State agency visits to new private institutions?

Section 107(c) of Public Law 105–336 amended section 17(d) of the NSLA (42 U.S.C. section 1766(d)) to require State agencies to visit private institutions (both non-profit and for-profit) applying for the first time *prior* to their approval to participate in CACFP. Section 107(c) further requires State agencies to make ''periodic site visits to private institutions that the State agency determines have a high probability of program abuse.''

How does USDA propose to implement these changes in the regulations?

It is clear that Congress intended to exclude from this pre-approval visit requirement both public institutions and institutions which are adult day care centers, and to focus additional State agency resources on child care institutions, especially on sponsors of more than one child care facility. The conference report language (Conf. Report 105–786, October 6, 1998) focuses throughout on the Program management problems documented in OIG audits. These audits have been confined to sponsors of family child care homes and/or child care centers because these organizations account for such a large share of Program reimbursements.

Why require a pre-approval visit to private independent centers?

We recognize that requiring State agencies to conduct a pre-approval visit of each new independent center could, especially in geographically large and rural States, result in delays in approving such centers. In large, rural States, the remote location of some centers might require State agencies to delay pre-approval visits until such time as other duties brought them to that part of the State. Given Congress' documented concern with Program access in low-income and rural areas, we have addressed this issue in Program guidance issued on July 14, 1999. That guidance sets forth various ways in which the pre-approval requirement might be met for independent centers (including obtaining information gathered by the State licensing agency in its previous visit(s) to the center), and also describes certain circumstances under which we would be willing to entertain State agency requests to delay the pre-approval requirement for one or more independent centers. Thus, the

guidance provides State agencies with options for meeting the legal requirement with respect to independent centers, but ensures that a pre-approval visit to sponsoring organizations by the State agency will always occur.

Accordingly, we propose to further amend revised section 226.6(b)(1)(i) to require State agencies to conduct pre-approval visits to new private child care institutions.

G. Provision of Information on the WIC Program

What does the law require with regard to distribution of information on the WIC Program?

Section 107(i) of Public Law 105–336 requires us to provide State agencies with information concerning the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) Program. It also requires State agencies to ''ensure that each participating family and group day care home and child care center (other than an institution providing care to school children outside school hours) receive materials'' that explain WIC's importance, its income eligibility guidelines, and how to obtain benefits. In addition, State agencies must provide these facilities with periodic updates of this information and must ensure that the parents of enrolled children receive this information.

How does USDA propose to implement this change?

On April 14, 1999, we provided the required information to each State agency administering the CACFP. We propose to require State agencies to distribute this information to each institution participating in the Program, to require that the institution make this information available to each sponsored facility (except sponsored outside-school-hours care centers), and to ensure that institutions and/or facilities make this information available to the households of participating children.

Accordingly, we propose to amend section 226.6 by adding a new paragraph (q) which includes the requirements for State agencies with respect to dissemination of WIC information. We also propose to amend section 226.15 by adding a new paragraph (n) which sets forth the institution's requirements for dissemination of WIC information to parents.

H. Audit Funding

What change did the law make to audit funds available to State agencies?

Section 107(e) of Public Law 105–336 amended section 17(i) of the NSLA (42 U.S.C. section 1766(i)) by reducing the amount of audit funding made available to State agencies. Prior to this change, State agencies could receive up to two percent of Program expenditures during the preceding fiscal year to conduct Program audits. This was changed to one and one-half percent of Program expenditures in the previous fiscal year, beginning in fiscal year 1999. In addition, in order to meet mandatory ten-year budget targets, the law also mandated a further reduction (to one percent) in fiscal years 2005 through 2007; however, the conference report made clear Congress' intent to restore funding which would maintain the level at one and one-half percent in those three years.

How does USDA propose to implement this change?

Accordingly, we propose to amend section 226.4(h) by removing the words ''2 percent'' and substituting in their place the words ''1½ percent''.

Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Shirley R. Watkins, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. When implemented, this proposed rule will primarily affect the procedures used by State agencies in reviewing applications submitted by, and monitoring the performance of, institutions which are participating or which wish to participate in the Child and Adult Care Food Program. Those proposed changes which would affect institutions and facilities will not, in the aggregate, have a significant economic impact.

Executive Order 12372

This Program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule related notice published in 48 FR 29114, June 24, 1983, and 49 FR 22676, May 31, 1984). Over the past five years, the Department informally consulted with State administering agencies, Program sponsors, and CACFP advocates on ways to improve Program management and integrity in CACFP. Discussions with State agencies took place in the joint Management Improvement Task Force meetings held between 1995 and 2000; in three biennial National meetings of State and Federal CACFP administrators (1996 in Seattle, 1998 in New Orleans, and 2000 in Chicago); at the December 1999 meeting of State Child Nutrition Program administrators in New Orleans; and in a variety of other small- and large-group meetings. Discussions with Program advocates and sponsors occurred in the Management Improvement Task Force meetings held in 1999–2000; in annual National meetings of the Sponsors Association, the CACFP Sponsors Forum; the Western Regional Office-California Sponsors Roundtable from 1996–2000; and in a variety of other small-and large-group meetings.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, the Food and Nutrition Service must usually prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in new annual expenditures of $100 million or more by State, local, or tribal governments or the private sector. When such a statement is needed, section 205 of the UMRA requires the Food and Nutrition Service to identify and consider regulatory alternatives that would achieve the same result.

This rule contains no Federal mandates (as defined in Title II of the UMRA) that would lead to new annual expenditures exceeding $100 million for State, local, or tribal governments or the private sector. Therefore, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict

with its provisions or which would otherwise impede its full implementation. This proposed rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' section of the preamble of the final rule. All available administrative procedures must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions. This includes any administrative procedures provided by State or local governments. In the CACFP, the administrative procedures are set forth at:

(1) 7 CFR 226.6(k), which establishes appeal procedures; and

(2) 7 CFR 226.22 and 7 CFR 3015, which address administrative appeal procedures for disputes involving procurement by State agencies and institutions.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), this notice invites the general public and other public agencies to comment on the information collection. Written comments on the information collection requirements proposed in this rule must be received on or before November 13, 2000 by the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), 3208 New Executive Office Building, Washington, DC 20503, Attention: Ms. Brenda Aguilar, Desk Officer for the Food and Nutrition Service. A copy of these comments may also be sent to Mr. Robert Eadie at the address listed in the **ADDRESSES** section of this preamble. Commenters are asked to separate their remarks on information collection requirements from their comments on the remainder of the proposed rule.

OMB is required to make a decision concerning the collection of information proposed in this rule between 30 to 60 days after its publication in the **Federal Register**. Therefore, a comment to OMB is most likely to be considered if OMB receives it within 30 days of the publication of this proposed rule. This does not affect the 90-day deadline for the public to comment to the Department on the substance of the proposed rule.

Comments are invited on: (a) Whether the collection of information is necessary for the Agency to perform its functions of the agency and will have practical utility; (b) the accuracy of the Agency's estimate of the burden of collecting the information, including whether its methodology and assumptions are valid; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. The title and description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: 7 CFR Part 226, Child and Adult Care Food Program.

OMB Number: 0584–0055.

Expiration Date: October 31, 2001.

Type of request: Revision of existing collections.

Abstract: This rule proposes to revise: the application process for institutions applying to participate in the CACFP; State- and institution-level monitoring requirements; Program training and other operating requirements for child care institutions and facilities; and other provisions which we are required to change as a result of the Healthy Meals for Healthy Americans Act of 1994, the Personal Responsibility and Work Opportunities Reconciliation Act of 1996, and the William F. Goodling Child Nutrition Reauthorization Act of 1998. The proposed changes are primarily designed to improve Program operations and monitoring at the State and institution levels and, where possible, to streamline and simplify Program requirements for State agencies and institutions.

ESTIMATED ANNUAL RECORDKEEPING BURDEN

Description of change	Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Enrollment documentation shall be updated annually, signed by a parent or legal guardian, and include information on child's normal days & hours of care & the meals normally received while in care					
Total Existing Households	0	0	0	0	0
Total Proposed Households	7 CFR 226.15(e)(2)	1,490,770	1	.33	491,954
Total Existing Recordkeeping Burden.	0	0	0	0	0
Total Proposed Recordkeeping Burden—+491,954					
Change—+491,954	0	0	0	0	0

List of Subjects in 7 CFR Part 226

Accounting, Aged, Day care, Food and Nutrition Service, Food assistance programs, Grant programs—health, Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Part 226 is proposed to be amended as follows:

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

2. In part 226:

a. All references to ''AFDC'' are revised to read ''TANF''.

b. All references to ''AFDC assistance unit'' are revised to read ''TANF recipient''.

3. In § 226.2:

a. Remove the definition of *AFDC assistance unit.*

b. New definitions of *Household contact*, *New institution*, *Renewing*

institution, and *TANF recipient* are added in alphabetical order.

The revision and additions specified above read as follows:

§ 226.2 Definitions

* * * * *

Household contact means a contact made by a sponsoring organization or a State agency to a household with a child(ren) in a family day care home or a child care center (excluding family day care home providers' households when the provider's own children are in care). Such contact may be made in writing or by telephone; however, a telephone contact must be preceded by written notice to the household explaining the reason for the call, providing the name of the sponsor employee who will make the call, and providing assurance that any information provided will be confidential and will be used solely for Program purposes. The household contact shall ask an adult member of the household to verify the attendance and enrollment of the household's children and the specific meal service(s) which the children routinely receive while in care.

* * * * *

New institution means an institution which is applying to participate in the Program for the first time, or an institution which is applying to participate in the Program after a lapse in Program participation.

* * * * *

Renewing institution means an institution which is participating in the Program at the time the State agency requires the institution to submit a renewal application.

* * * * *

TANF recipient means an individual or household receiving assistance (as defined in 45 CFR § 260.31) under a State-administered Temporary Assistance to Needy Families program.

* * * * *

4. In § 226.4:

a. Paragraph (g)(2) is amended by removing the word ''supplements'' and adding in its place the word ''meals'', and by removing the second sentence and adding two new sentences in its place.

b. Paragraph (h) is amended by removing the words ''two percent'' and adding in their place the words ''one and one-half percent''.

The addition specified above reads as follows:

§ 226.4 Payments to States and use of funds

* * * * *

(g) * * *

(2) * * * Such adjustments shall be rounded to the nearest lower cent, based on changes measured over the most recent twelve-month period for which data are available. The adjustment to the rates shall be computed using the unrounded rate in effect for the preceding year.

* * * * *

5. In § 226.6:

a. Paragraphs (a) and (b) are revised.

b. Paragraphs (f) (1) through (f)(3) are revised, and paragraphs (f)(4) through (f)(11) are removed.

c. Paragraph (g) is revised.

d. Paragraph (h) is amended by revising the first sentence and by adding a new second sentence immediately thereafter.

e. Paragraph (j) is revised.

f. Paragraphs (l) and (m) are revised.

g. A new paragraph (q) is added.

The additions and revisions specified above read as follows:

§ 226.6 State agency administrative responsibilities.

(a) *State agency personnel.* Each State agency shall provide sufficient consultative, technical, and managerial personnel to:

(1) Administer the Program;

(2) Provide sufficient training and technical assistance to institutions;

(3) Monitor Program performance;

(4) Facilitate expansion of the Program in low-income and rural areas; and

(5) Ensure effective operation of the Program by participating institutions.

(b) *Program applications and agreements.* (1) Application review process. Each State agency shall establish an application review process to determine the eligibility of new institutions, renewing institutions, and facilities for which applications are submitted by sponsoring organizations. In its review of any institution's application to participate in the Program, the State agency shall consult the list of seriously deficient institutions and shall deny the application of any institution on that list. The State agency shall enter into written agreements with institutions in accordance with paragraph (b)(2) of this section.

(i) *Application procedures for new institutions.* Each State agency shall establish application procedures to determine the eligibility of new institutions under this part. At a minimum, such procedures shall require that institutions submit information to the State agency in accordance with paragraph (f) of this section. For new private child care institutions, such procedures shall also include a satisfactory pre-approval visit by the State agency to confirm the information in the institution's application and to further assess its ability to manage the Program. In addition, such procedures shall include:

(A) For both sponsored and independent child care centers, adult day care centers and outside-school-hours care centers, submission of the number of enrolled children eligible for free, reduced price and paid meals;

(B) For sponsoring organizations of day care homes:

(*1*) Submission of the current total number of children enrolled;

(*2*) An assurance that day care home providers' children enrolled in the Program are eligible for free or reduced price meals;

(*3*) The total number of tier I and tier II day care homes that it sponsors;

(*4*) The number of children enrolled in tier I day care homes;

(*5*) The number of children enrolled in tier II day care homes; and

(*6*) The number of children in tier II day care homes that have been identified as eligible for free or reduced price meals;

(C) For all institutions, submission of the institution's nondiscrimination policy statement, free and reduced price policy statement, and media release;

(D) For all sponsoring organizations, submission of a management plan which includes:

(*1*) Detailed information on the sponsoring organization's administrative structure;

(*2*) The staff assigned to Program management and monitoring;

(*3*) An administrative budget;

(*4*) The procedures to be used by the sponsoring organization to administer the Program in, and disburse payments to, the child care facilities under its sponsorship; and,

(*5*) For sponsoring organizations of day care homes, a description of the system for making tier I day care home determinations, and a description of the system of notifying tier II day care homes of their options for reimbursement;

(E) For all institutions, submission of an administrative budget which the State agency shall review in accordance with § 226.7(g);

(F) Submission of documentation that all independent or sponsored child care centers, adult day care centers, and outside-school-hours care centers, and all day care homes for which application is made by a sponsoring organization, are in compliance with Program licensing/approval provisions;

(G) Except for any public organization or any proprietary title XIX and title XX

centers and organizations which solely sponsor proprietary title XIX and title XX centers, submission of evidence of tax-exempt status in accordance with § 226.15(a);

(H) For proprietary title XX child care centers, submission of:

(*1*) Documentation that they are currently providing nonresidential day care services for which they receive compensation under title XX of the Social Security Act; and

(*2*) Certification that not less than 25 percent of enrolled children or 25 percent of the licensed capacity, whichever number is less, in each such center during the most recent calendar month were title XX beneficiaries.

(I) For proprietary title XIX or title XX adult day care centers, submission of:

(*1*) Documentation that they are currently providing nonresidential day care services for which they receive compensation under title XIX or title XX of the Social Security Act; and

(*2*) Certification that not less than 25 percent of enrolled adult participants in each such center during the most recent calendar month were title XIX or title XX beneficiaries; and

(J) Submission of a statement of institutional preference to receive commodities or cash-in-lieu of commodities.

(ii) *Application procedures for renewing institutions.* Each State agency shall establish application procedures to determine, under this part, the eligibility of renewing institutions.

(A) At a minimum, such procedures shall include the renewing institution's submission of:

(*1*) A management plan and administrative budget, in accordance with paragraphs (b)(1)(i)(D), (b)(1)(i)(E), and (f)(1)(vi) of this section; and

(*2*) Such other documentation as the State agency shall determine necessary to ensure an institution's ability to manage the Program properly, efficiently, and effectively in accordance with this part.

(B) Renewing institutions shall not be required to submit a free and reduced price policy statement unless they make substantive changes to that statement.

(C) The State agency shall require each renewing institution participating in the Program to reapply for participation at a time determined by the State agency, except that no institution shall be allowed to participate for less than 12 or more than 36 calendar months under an existing application, except as described in paragraph (b)(2)(ii)(B) of this section.

(iii) *State agency notification requirements.* Any new or renewing institution applying for participation in the Program shall be notified in writing of approval or disapproval by the State agency, within 30 calendar days of the State agency's receipt of a complete application. Whenever possible, State agencies should provide assistance to institutions which have submitted an incomplete application. Any disapproved applicant shall be notified of the reasons for its disapproval and its right to appeal under paragraph (k) of this section.

(2) *Program agreements.* (i) The State agency shall require each institution which has been approved for participation in the Program to enter into an agreement governing the rights and responsibilities of each party. The State agency may allow a renewing institution to amend its existing Program agreement in lieu of executing a new agreement. The existence of a valid agreement, however, does not eliminate the need for an institution to comply with the reapplication provisions of paragraphs (b) and (f) of this section.

(ii) The length of time during which such agreements are in effect shall be no less than one nor more than three years, except that:

(A) The State agency and institutions which are school food authorities shall enter into a single permanent agreement for the administration of all child nutrition programs for which the State agency has responsibility; and

(B) If the State agency has not conducted a review of a renewing institution since the last agreement was signed or extended, and it has reason to believe that such a review is immediately necessary, the State agency may approve the agreement with the institution for a period of less than one year, pending the completion of a review of the institution.

(iii) Any agreement that extends from one fiscal year into the following fiscal year shall stipulate that, in subsequent years, the agreement shall be in effect contingent upon the availability of Program funds. However, this shall not limit the State agency's ability to terminate the agreement in accordance with paragraph (c) of this section.

(iv) The Program agreement shall provide that the institution accepts final financial and administrative responsibility for management of a proper, efficient, and effective food service, and will comply with all requirements under this part. In addition, the agreement shall provide that the sponsor shall comply with all requirements of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975 and the Department's regulations concerning nondiscrimination (7 CFR parts 15, 15a and 15b), including requirements for racial and ethnic participation data collection, public notification of the nondiscrimination policy, and reviews to assure compliance with such policy, to the end that no person shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, the Program.

* * * * *

(f) Miscellaneous responsibilities. State agencies shall require institutions to comply with the applicable provisions of this part and shall provide or collect the information specified in this paragraph (f).

(1) *Annual responsibilities.* In addition to its other responsibilities under this part, each State agency shall annually:

(i) Inform institutions which are pricing programs of their responsibility to ensure that free and reduced price meals are served to participants unable to pay the full price;

(ii) Provide to all institutions a copy of the income standards to be used by institutions for determining the eligibility of participants for free and reduced price meals under the Program;

(iii) Coordinate with the State agency which administers the National School Lunch Program to ensure the receipt of a list of elementary schools in the State in which at least one-half of the children enrolled are certified eligible to receive free or reduced price meals. The State agency shall provide the list to sponsoring organizations by February 15 of each year, unless the State agency that administers the National School Lunch Program has elected to base data for the list on a month other than October, in which case the State agency shall provide the list to sponsoring organizations within 15 calendar days of its receipt from the State agency that administers the National School Lunch Program. The State agency shall also provide each sponsoring organization with census data, as provided to the State agency by FNS upon its availability on a decennial basis, showing areas in the State in which at least 50 percent of the children are from households meeting the income standards for free or reduced price meals. In addition, the State agency shall ensure that the most recent available data is used if the determination of a day care home's eligibility as a tier I day care home is

made using school or census data. Determinations of a day care home's eligibility as a tier I day care home shall be valid for one year if based on a provider's household income, three years if based on school data, or until more current data are available if based on census data. However, a sponsoring organization, the State agency, or FNS may change the determination if information becomes available indicating that a home is no longer in a qualified area. The State agency shall not routinely require annual redeterminations of the tiering status of tier I day care homes based on updated elementary school data;

(iv) Provide all sponsoring organizations of day care homes in the State with a listing of State-funded programs, participation in which by a parent or child will qualify a meal served to a child in a tier II home for the tier I rate of reimbursement;

(v) Require child care centers, adult day care centers and outside-school-hours care centers to submit current eligibility information on enrolled participants, in order to calculate a blended rate or claiming percentage in accordance with § 226.9(b), and require sponsoring organizations of family day care homes to submit the total number of tier I and tier II day care homes that it sponsors, as well as a breakdown showing the total number of children enrolled in tier I day care homes, enrolled in tier II day care homes, and enrolled in tier II day care homes but identified as eligible for free and reduced price meals;

(vi) Require each sponsoring organization of child care facilities to submit an administrative budget with sufficiently detailed information for the State agency to determine the allowability, necessity, and reasonableness of all proposed expenditures, and to assess the institution's capability to manage Program funds. The administrative budget submitted by any sponsoring organization shall demonstrate that the sponsor will expend and account for funds in accordance with regulatory requirements, FNS Instruction 796–2 (''Financial Management in the Child and Adult Care Food Program''), 7 CFR Parts 3015 and 3016, and applicable Office of Management and Budget circulars;

(vii) Require each institution to issue a media release;

(viii) Require each institution to provide information concerning its licensing/approval status and that of its facilities, as appropriate;

(ix) Require each institution to submit verification that all facilities under its sponsorship have adhered to the training requirements set forth in Program regulations; and

(x) Require each sponsoring organization of family day care homes to submit to the State agency a list of family day care home providers receiving tier I benefits on the basis of their participation in the Food Stamp Program. Within 30 days of receiving this list, the State agency will provide this list to the State agency responsible for the administration of the Food Stamp Program.

(2) *Triennial responsibilities.* In addition to its other responsibilities under this part, each State agency shall, at intervals not to exceed 36 months:

(i) Require participating institutions to re-apply to continue their participation; and

(ii) Require sponsoring organizations of child care facilities to submit a management plan with the elements set forth in paragraph (b)(1)(i)(D) of this section.

(3) *Other responsibilities.* At intervals and in a manner specified by the State agency, but not more frequently than annually, the State agency may:

(i) Require independent centers to submit an administrative budget with sufficiently detailed information and documentation to enable the State agency to make an assessment of the institution's qualifications to manage Program funds. Such budget shall demonstrate that the institution will expend and account for funds in accordance with regulatory requirements, FNS Instruction 796–2 (''Financial Management in the Child and Adult Care Food Program''), 7 CFR Parts 3015 and 3016, and applicable Office of Management and Budget circulars;

(ii) Require institutions to report their commodity preference;

(iii) Require each institution to submit documentation of its non-discrimination statement;

(iv) Require an institution (except for any public organization, or any proprietary title XIX and title XX centers and sponsoring organizations of proprietary title XIX and title XX centers) to submit evidence of nonprofit status in accordance with § 226.15(a);

(v) Require proprietary title XX child care centers to submit documentation that they are currently providing nonresidential day care services for which they receive compensation under title XX of the Social Security Act, and certification that not less than 25 percent of enrolled participants or 25 percent of the licensed capacity, whichever is less, in each such center during the most recent calendar month were title XX beneficiaries;

(vi) Require proprietary title XIX or title XX adult care centers to submit documentation that they are currently providing nonresidential day care services for which they receive compensation under title XIX or title XX of the Social Security Act, and certification that not less than 25 percent of enrolled participants in each such center during the most recent calendar month were title XIX or title XX beneficiaries;

(vii) Require each institution to indicate its choice to receive all, part or none of advance payments, if the State agency chooses to make advance payments available; and

(viii) Perform verification in accordance with § 226.23(h) and paragraph (l)(3) of this section. State agencies verifying the information on free and reduced price applications shall ensure that verification activities are conducted without regard to the participant's race, color, national origin, sex, age, or disability.

(g) *Program expansion.* Each State agency shall take action to expand the availability of benefits under this Program, and shall conduct outreach to potential sponsoring organizations of family day care homes which might administer the Program in low-income or rural areas.

(h) *Commodity distribution.* The State agency shall require new applicant institutions to state their preference to receive commodities or cash-in-lieu of commodities, and may periodically inquire as to participating institutions' preference to receive commodities or cash-in-lieu of commodities. State agencies shall annually provide institutions with information on foods available in plentiful supply, based on information provided by the Department. * * *

* * * * *

(j) *Procurement provisions.* State agencies shall require institutions to adhere to the procurement provisions set forth in § 226.22 and shall annually determine that all meal procurements with food service management companies are in conformance with bid and contractual requirements of § 226.22.

* * * * *

(l) Program assistance—(1) *General.* Each State agency shall provide technical and supervisory assistance to institutions and facilities to facilitate effective Program operations, monitor progress toward achieving Program goals, and ensure compliance with the Department's nondiscrimination

regulations (part 15 of this title) issued under title VI of the Civil Rights Act of 1964. Documentation of supervisory assistance activities, including reviews conducted, corrective actions prescribed, and follow-up efforts, shall be maintained on file by the State agency.

(2) *Review content.* As part of its conduct of administrative reviews, the State agency shall assess institutional compliance with: the provisions of this part; any applicable instructions and handbooks issued by FNS and the Department under this part; and any instructions and handbooks issued by the State agency which are not inconsistent with the provisions of this part. Program reviews shall include State agency evaluation of the documentation used by sponsoring organizations to classify their day care homes as tier I day care homes. At a minimum, State agency reviews shall also include an assessment of:

(i) The institution's maintenance of required Program documents on file;

(ii) Facility licensing and approval;

(iii) Meal counts;

(iv) Administrative costs;

(v) Sponsor training and monitoring of facilities;

(vi) Observation of meal service;

(vii) The sponsoring organization's compliance with the household contact requirements set forth at § 226.16(d)(5); and

(viii) All other Program requirements.

(3) *Review of sponsored facilities.* As part of each required review of a sponsoring organization, the State agency shall select a sample of facilities in order to compare available enrollment and attendance records and facility review results to meal counts submitted by those facilities. As part of such reviews, the State agency shall conduct verification of Program applications in accordance with § 226.23(h).

(4) *Household contacts.* When conducting reviews of sponsored facilities or institutions, State agencies shall contact the households of children in family day care homes or in child care centers (to exclude family day care home provider's households when the provider's own children are in care) whenever a facility or institution claims the same number and type of meals served for ten or more consecutive days, or claims an unusually high number of meals for more than one day in a claiming period. In such cases, the State agency shall contact at least one half of the households of children in care (not counting family day care providers' households when their children are in care) for the purpose of verifying their children's enrollment and attendance and the specific meal service(s) which their children routinely receive while in care. Household contacts may be made in writing or by telephone. However, if telephone contacts are used, State agencies shall give advance notice of the call to the household in writing. Such notice shall inform the household of the upcoming call and shall provide the name of the employee who will make the call. Such notice shall also inform the household that the call is being made to verify their child's participation or attendance at a child care facility receiving CACFP reimbursement; that all information provided shall be strictly confidential; and that the State agency will only use the information for Program purposes. If one-quarter or more of the selected households with children in a sponsored center, or if any of the households with children in a family day care home, cannot be contacted or refuse to provide information within 30 days, or if any of the households contacted fail to corroborate the facility's meal claim, the State agency shall make an unannounced visit to the facility within one week. Non-respondent households shall be counted towards meeting the State agency's requirement to contact one-half of the households with children in a particular facility.

(5) *Frequency and number of required institution reviews.* State agencies shall annually review 33.3 percent of all institutions. State agencies shall also ensure that each institution is reviewed according to the following schedule.

(i) Independent centers, sponsoring organizations of centers, and sponsoring organizations of day care homes with 1 to 200 homes shall be reviewed at least once every four years. Reviews of sponsoring organizations shall include reviews of 15 percent of their child care, adult day care, and outside-school-hours care centers and 10 percent of their day care homes.

(ii) Sponsoring organizations with more than 200 homes shall be reviewed at least once every two years. Reviews of such sponsoring organizations shall include reviews of 5 percent of the first 1,000 homes and 2.5 percent of all homes in excess of 1,000.

(iii) Reviews shall be conducted for newly participating sponsoring organizations with five or more child care facilities or adult day care facilities within the first 90 days of program operations.

* * * * *

(q) *WIC Program Information.* State agencies shall provide information on the importance and benefits of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), and WIC income eligibility guidelines, to participating institutions. In addition, the State agency shall ensure that:

(1) Participating family day care homes and sponsored child care centers receive this information, and periodic updates of this information, from their sponsoring organizations or the State agency; and

(2) The parents of enrolled children also receive this information.

6. In § 226.7:

a. Paragraph (g) is revised.

b. Paragraph (k) is amended by adding a new sentence after the first sentence.

The revision and addition specified above read as follows:

§ 226.7 State agency responsibilities for financial management.

* * * * *

(g) *Administrative budget approval.* The State agency shall review institution administrative budgets and shall limit allowable administrative claims by each sponsoring organization to the administrative costs approved in its budget. The administrative budget shall demonstrate the institution's ability to manage Program funds in accordance with this part, FNS Instruction 796–2 (''Financial Management in the Child and Adult Care Food Program''), 7 CFR Parts 3015 and 3016, and applicable Office of Management and Budget circulars. Sponsoring organizations shall submit an administrative budget to the State agency annually, and independent centers shall submit administrative budgets as frequently as required by the State agency. Administrative budget levels may be adjusted to reflect changes in Program activities.

* * * * *

(k) * * * Such procedures shall include State agency edit checks, including but not limited to ensuring that payments are made only for approved meal types and do not exceed the product of the total enrollment times operating days times approved meal types. * * *

* * * * *

7. In § 226.8:

a. Paragraphs (a) and (b) are revised.

b. Paragraph (c) is amended by adding the words ''or agreed-upon procedures engagements'' after the words ''administrative reviews'' in the second sentence.

The revisions specified above read as follows:

§ 226.8 Audits.

(a) Unless otherwise exempt, audits at the State and institution levels shall be conducted in accordance with Office of Management and Budget circular A–133 and the Department's implementing regulations at 7 CFR part 3052. State agencies shall establish audit policy for title XIX and title XX proprietary institutions. However, the audit policy established by the State agency shall not conflict with the authority of the State agency or the Department to perform, or cause to be performed, audits, reviews, agree-upon procedures, or other monitoring activities.

(b) The funds provided to the State agency under § 226.4(h) may be made available to institutions to fund a portion of organization-wide audits made in accordance with 7 CFR part 3052. The funds provided to an institution for an organization-wide audit shall be determined in accordance with 7 CFR 3052.230(a).

* * * * *

8. In § 226.10:

a. The first sentence of paragraph (a) is revised.

b. Paragraph (c) is amended by adding three new sentences at the end of the introductory text and by adding paragraphs (c)(1), (c)(2), and (c)(3).

c. Paragraph (f) is revised.

The addition and revisions specified above read as follows:

§ 226.10 Program payment procedures.

(a) If a State agency decides to issue advance payments to all or some of the participating institutions in the State, it shall provide such advances no later than the first day of each month to those institutions electing to receive advances in accordance with § 226.6 (f)(3)(vii).

* * *

* * * * *

(c) * * * Prior to submitting its consolidated monthly claim to the State agency, each sponsoring organization shall perform edit checks on its facilities' meal claims. Edit checks must be performed for every day meals are claimed by a facility. Discrepancies between the facility's meal claim and its enrollment (as adjusted for absences, shift care, and other factors) must be subjected to more thorough review to determine if the claim is accurate. At a minimum, these edit checks must:

(1) Verify that the facility has been approved to serve the types of meals claimed;

(2) Compare the number of children enrolled for care (taking an expected rate of absences into account) to the number of meals claimed; and

(3) Detect block claiming (*i.e.*, no daily variation in the number of meals claimed).

* * * * *

(f) If, based on the results of audits, investigations, or other reviews, a State agency has reason to believe that an institution, child or adult care facility, or food service management company has engaged in unlawful acts with respect to Program operations, the evidence found in audits, investigations, or other reviews shall be a basis for non-payment of claims for reimbursement.

9. In § 226.11:

a. Paragraph (a) is amended by adding a new sentence to the end of the paragraph.

b. Paragraph (b) is amended by adding a new sentence to the end of the paragraph.

c. Paragraph (c)(1) is revised.

The additions and revision specified above read as follows:

§ 226.11 Program payments for child care centers, adult day care centers and outside-school-hours care centers.

(a) * * * However, State agencies may defer payment for meals served in approved centers until the day on which the State agency and center enter into a Program agreement.

(b) * * * Prior to submitting its consolidated monthly claim to the State agency, each sponsoring organization shall compare sponsored child care and outside-school-hour care centers' meal claims against the most recent information on enrollment, licensed capacity, total days of operation, attendance patterns, and authorized meal services, for each meal type being claimed on each day of operation.

(c) * * *

(1) Base reimbursement to child care centers and adult day care centers on actual time of service meal counts, and multiply the number of meals, by type, served to participants eligible to receive free meals, served to participants eligible to receive reduced-price meals, and served to participants from families not meeting such standards by the applicable national average payment rate; or

* * * * *

10. In § 226.13:

a. Paragraph (b) is amended by adding a new sentence to the end of the paragraph; and

b. Paragraph (c) is amended by adding the words ''based on daily meal counts taken in the home'' after the words ''as applicable,''.

The addition specified above reads as follows:

§ 226.13 Food service payments to sponsoring organizations for day care homes.

* * * * *

(b) * * * Prior to submitting its consolidated monthly claim to the State agency, each sponsoring organization shall compare day care homes' meal claims against the most recent information on enrollment, licensed capacity, total days of operation, attendance patterns, and authorized meal services at each home, for each meal type being claimed on each day of operation, and shall not include in its consolidated claim any meal(s) which are not properly supported by appropriate documentation.

* * * * *

11. In § 226.15:

a. Paragraph (b) is revised.

b. Paragraphs (e)(2) and (e)(3) are amended by adding a new sentence to the end of each paragraph.

c. Paragraph (e)(4) is revised.

d. New paragraph (e)(15) is added.

e. Paragraphs (g)-(k) are redesignated as paragraphs (h)-(l), and a new paragraph (g) is added.

f. Redesignated paragraph (i) is amended by removing the reference ''§ 226.6(f)(1)'' and adding in its place the reference ''§ 226.6(b)(2)''.

g. New paragraphs (m) and (n) are added.

The additions and revisions specified above read as follows:

§ 226.15 Institution provisions.

* * * * *

(b) *New applications and renewals.* Each institution shall submit to the State agency with its application all information required for its approval as set forth in § § 226.6(b) and (f). Such information shall demonstrate that the institution has the administrative and financial capability to operate the Program properly, efficiently, and effectively.

* * * * *

(e) * * *

(2) * * * For child care centers and outside-school-hours care centers, such documentation of enrollment shall be updated annually, signed by a parent or legal guardian, and include information on each child's normal days and hours of care and the meals normally received while in care.

(3) * * * Such documentation of enrollment shall be updated annually, signed by a parent or legal guardian, and include information on each child's normal days and hours of care and the meals normally received while in care.

(4) Daily records indicating the number of participants in attendance and the daily meal counts, by type

(breakfast, lunch, supper, and supplements), served to family day care home participants, or the time of service meal counts, by type, (breakfast, lunch, supper, and supplements), served to child care center and adult day care center participants.

* * * * *

(15) For sponsoring organizations, records documenting the attendance of each staff member with monitoring responsibilities at training which includes instruction on the Program's meal patterns, meal counts, claims submission and review procedures, recordkeeping requirements, and an explanation of the Program's reimbursement system.

* * * * *

(g) No institution which is a sponsoring organization of family day care homes which employs more than one person is permitted to base payment (including bonuses or gratuities) to its employees, contractors, or family day care home providers solely on the number of new family day care homes recruited for the sponsoring organization's Program.

* * * * *

(m) Each institution shall comply with all regulations, instructions and handbooks issued by FNS and the Department and all regulations, instructions and handbooks issued by the State agency which are not inconsistent with the provisions established in Program regulations.

(n) Each institution shall ensure that parents of enrolled children are provided with current information on the benefits and importance of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), and the eligibility requirements for WIC participation.

12. In § 226.16:

a. The introductory text of paragraph (b) and paragraph (b)(1) are revised.

b. Paragraphs (d)(2), (d)(3) and (d)(4) are revised.

c. New paragraph (d)(5) is added.

d. New paragraph (l) is added.

The additions and revisions specified above read as follows:

§ 226.16 Sponsoring organization provisions.

* * * * *

(b) Each sponsoring organization shall submit to the State agency with its application all information required for its approval, and the approval of the child care and adult day care facilities under its jurisdiction, as set forth in § § 226.6(b) and (f). The application shall demonstrate that the institution has the administrative and financial capability to operate the Program properly, efficiently, and effectively in accordance with the Program regulations. In addition to the information required in § § 226.6(b) and (f), the application shall include:

(1) A sponsoring organization management plan and budget, in accordance with § § 226.6(b)(1)(i)(D), 226.6(f)(1)(vi), and 226.7(g);

* * * * *

(d) * * *

(2) Providing, prior to the beginning of Program operations, training on Program duties and responsibilities to key staff from all sponsored child care and adult day care facilities. At a minimum, such training shall include instruction on the Program's meal patterns, meal counts, claims submission and review, recordkeeping requirements, and an explanation of the Program's reimbursement system. Attendance by key staff, as defined by the sponsoring organization, shall be mandatory;

(3) Providing, not less frequently than annually, additional mandatory training sessions for key staff from all sponsored child care and adult day care facilities. At a minimum, such training shall include instruction on the Program's meal patterns, meal counts, claims submission and review, recordkeeping requirements, and an explanation of the Program's reimbursement system. Attendance by key staff, as defined by the State agency, shall be mandatory;

(4)(i) *Review elements.* All reviews shall include a reconciliation of the facility's meal claims with enrollment and attendance records, an assessment of whether the facility has corrected problems noted on the previous review(s), and an assessment of the facility's compliance with the Program requirements pertaining to:

(A) The meal pattern;

(B) Licensing or approval;

(C) Health, safety and sanitation;

(D) Attendance at training;

(E) Meal counts;

(F) Menu and meal records; and

(G) The annual updating and content of enrollment forms.

(ii) Such reviews shall include a thorough examination of the meal claims recorded by the facility for five consecutive days during the current and/or prior claiming period. For each day examined, reviewers shall use enrollment and attendance records to determine the number of children in care during each meal service and to compare those numbers to the numbers of breakfasts, lunches, suppers, and/or supplements claimed for that day. Based on that comparison, reviewers shall determine whether the claims were accurate. If there is a discrepancy between the number of children enrolled or in attendance on the day of review and prior claiming patterns, the reviewer shall attempt to reconcile the difference and determine whether the establishment of an overclaim is necessary. In addition, after the on-site review has been conducted, the sponsoring organization shall analyze the review findings to determine whether household contacts, as defined in § 226.2, must be initiated to determine the validity of the providers' previous meal claims.

(iii) *Frequency and type of required reviews of sponsored child care and adult day care facilities.* Such reviews shall be made not less frequently than three times per year at each child care facility and adult day care facility. At least one review shall be made during each child care or adult day care facility's first four weeks of Program operations and not more than six months shall elapse between reviews. However, sponsors may conduct reviews on average of three times each year per child care or adult day care facility, provided that each facility receives at least two visits per year, at least one review is made during each facility's first four weeks of Program operations, and no more than twelve months elapse between reviews. Sponsoring organizations which have completed two of the three required facility reviews without discovering serious problems (*e.g.,* non-compliance with the meal pattern, missing or inaccurate meal claims, submission of inaccurate claims, failure to keep required records, or the provider's unexplained absence) may choose either to not conduct a third review of that facility or to use the third review as an opportunity to conduct training at that facility;

(5) *Household contacts.* (i) Sponsoring organizations shall contact households of children in family day care homes and child care centers (to exclude family day care home provider's households when the provider's own children are in care) whenever a facility claims the same number and type of meals served for ten or more consecutive days, or claims an unusually high number of meals for more than one day in a claiming period. In such cases, sponsoring organizations shall contact at least one half of the households of children in care at that facility (not counting family day care providers' households when their children are in care) for the purpose of verifying their children's enrollment and attendance and the specific meal

service(s) which their children routinely receive while in care. Sponsoring organizations are also encouraged to make household contacts whenever they detect unusual or suspicious patterns in the meal claims submitted by their sponsored facilities.

(ii) Household contacts may be made in writing or by telephone. However, if telephone contacts are used, sponsoring organizations shall give advance notice of the call to the household in writing. Such notice shall inform the household of the upcoming call and shall provide the name of the employee who will make the call. Such notice shall also inform the household that the call is being made to verify their child's participation or attendance at a child care facilities receiving CACFP reimbursement; that all information provided shall be strictly confidential; and that the sponsor will only use the information for Program purposes.

(iii) If one-quarter or more of the selected households with children in a sponsored center, or if any of the households with children in a family day care home, cannot be contacted or refuse to provide information within 30 days, or if any of the households contacted fail to corroborate the facility's meal claim, the sponsoring organization shall make an unannounced visit to the facility within one week. Non-respondent households shall be counted towards meeting the sponsoring organization's requirement to contact one-half of the households with children in a particular facility. Sponsoring organizations may make additional household contacts as they may deem necessary, provided that the procedures set forth in this paragraph are followed.

* * * * *

(l) Sponsoring organizations of family day care homes shall not make payments to employees or contractors solely on the basis of the number of homes recruited. However, such employees or contractors may be paid or evaluated on the basis of recruitment activities accomplished.

13. In § 226.17:

a. Paragraph (b)(7) is amended by adding a new sentence at the end of the paragraph.

b. Paragraph (b)(8) is revised.

c. A new paragraph (b)(9) is added.

The additions and revision specified above read as follows:

§ 226.17 Child care center provisions.

* * * * *

(b) * * *

(7) * * * Such documentation of enrollment shall be updated annually, signed by a parent or legal guardian, and include information on each child's normal days and hours of care and the meals normally received while in care.

(8) Each child care center shall maintain daily records of time of service meal counts by type (breakfast, lunch, supper, and supplements) served to enrolled children, and to adults performing labor necessary to the food service.

(9) Each child care center shall require key staff, as defined by the State agency, to attend Program training prior to the facility's participation in the Program, and at least annually thereafter, on content areas established by the State agency.

14. In § 226.18:

a. Paragraph (b)(2) is revised.

b. Paragraph (b)(7) is amended by removing the semicolon, adding a period after the word ''agreement'' and by adding a new sentence at the end of the paragraph.

c. Paragraph (e) is amended by adding the words, ''shall maintain on file documentation of each child's enrollment and'' after the words ''Each day care home'' in the first sentence, and by adding a new sentence after the first sentence.

The revisions and additions specified above read as follows:

§ 226.18 Day care home provisions.

* * * * *

(b) * * *

(2) The responsibility of the sponsoring organization to require key staff, as defined by the State agency, to attend Program training prior to the facility's participation in the Program, and at least annually thereafter, on content areas established in this Part and by the State agency, and the responsibility of the sponsoring organization to train the day care home's staff in Program requirements;

* * * * *

(7) * * * The sponsoring organization shall not withhold Program payments to any family day care home for any other reason except that, with the prior consent of the State agency, the sponsoring organization may withhold from the provider any amounts which the sponsoring organization has reason to believe are based on a false or erroneous claim submitted by the provider.

* * * * *

(e) * * * Such documentation of enrollment shall be updated annually, signed by a parent or legal guardian, and include information on each child's normal days and hours of care and the meals normally received while in care.

* * *

* * * * *

15. In § 226.19:

a. The introductory text of paragraph (b)(7) is revised.

b. Paragraph (b)(8)(i) is amended by removing the semicolon, adding a period after ''§ 226.23(e)(1)'' and adding a new sentence at the end of the paragraph.

The addition and revision specified above read as follows:

§ 226.19 Outside-school-hours care center provisions.

* * * * *

(b) * * *

(7) Each outside-school-hours care center shall require key operational staff, as defined by the State agency, to attend Program training prior to the facility's participation in the Program, and at least annually thereafter, on content areas established by the State agency. Each meal service shall be supervised by an adequate number of operational personnel who have been trained in Program requirements as outlined in this Section. Operational personnel shall ensure that:

* * * * *

(8) * * *

(i) * * * Such documentation of enrollment shall be updated annually, shall be signed by a parent or legal guardian, and shall include information on each child's normal days and hours of care and the meals normally received while in care.

* * * * *

16. In § 226.19a:

a. Paragraph (b)(9) is revised.

b. A new paragraph (b)(11) is added.

The addition and revision specified above read as follows:

§ 226.19a Adult day care center provisions.

* * * * *

(b) * * *

(9) Each adult day care center shall maintain daily records of time of service meal counts by type (breakfast, lunch, supper, and supplements) served to enrolled participants, and to adults performing labor necessary to the food service.

* * * * *

(11) Each adult day care center shall require key operational staff, as defined by the State agency, to attend Program training prior to the facility's participation in the Program, and at least annually thereafter, on content areas established by the State agency. Each meal service shall be supervised by an adequate number of operational personnel who have been trained in Program requirements as outlined in this Section.

17. In § 226.20, paragraphs (k)-(p) are redesignated as paragraphs (l)-(q), respectively, and a new paragraph (k) is added to read as follows:

§ 226.20 Requirements for meals.

* * * * *

(k) *Time of meal service.* In addition to the requirements for outside-school-hours care centers set forth at § 226.19(b)(6), State agencies may require any institution or child care facility to allow a specific amount of time to elapse between meal services or require that meal services not exceed a specified duration.

* * * * *

18. In § 226.23, paragraph (a) is revised to read as follows:

§ 226.23 Free and reduced-price meals.

(a) The State agency shall not enter into a Program agreement with a new institution until the institution has submitted, and the State agency has approved, a written policy statement concerning free and reduced-price meals to be used in all child and adult day care facilities under its jurisdiction, as described in paragraph (b) of this Section. The State agency shall not require an institution to revise its policy statement unless the institution makes a substantive change to its policy. Pending approval of a revision of a policy statement, the existing policy shall remain in effect.

* * * * *

§ 226.25 [Amended]

19. In § 226.25, paragraph (g) is removed.

Dated: August 28, 2000.

Shirley R. Watkins,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 00–22901 Filed 9–11–00; 8:45 am]

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Part IV

Department of Housing and Urban Development

24 CFR Parts 5, 903 and 982
Section 8 Homeownership Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 903 and 982

[Docket No. FR–4427–F–02]

RIN 2577–AB90

Section 8 Homeownership Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements the ''homeownership option'' authorized by section 8(y) of the United States Housing Act of 1937, as amended by section 555 of the Quality Housing and Work Responsibility Act of 1998. Under the section 8(y) homeownership option, a public housing agency may provide tenant-based assistance to an eligible family that purchases a dwelling unit that will be occupied by the family. This final rule follows publication of an April 30, 1999 proposed rule, and takes into consideration the public comments received on the proposed rule.

DATES: *Effective Date:* October 12, 2000.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–0477. (This is not a toll-free number.) Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Introduction

On April 30, 1999 (64 FR 23488), HUD published a proposed rule for public comment to implement the ''homeownership option'' under section 8(y) of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (referred to as the ''1937 Act''), as amended by section 555 of the Quality Housing and Work Responsibility Act of 1998 (Title V of the FY 1999 HUD Appropriations Act; Public Law 105–276, approved October 21, 1998; 112 Stat. 2461, 2518) (referred to as the ''Public Housing Reform Act''). Section 8(y) authorizes Section 8 tenant-based assistance for an eligible family that occupies a home purchased and owned by members of the family.

The April 30, 1999 rule proposed to implement the section 8(y) homeownership option by adding a new ''special housing type'' under subpart M of HUD's regulations at 24 CFR part 982. The part 982 regulations, which were amended by a final rule published on October 21, 1999 (64 FR 56894), implement the statutory merger of the Section 8 tenant-based certificate and voucher programs into a new Housing Choice Voucher program. Subpart M of 24 CFR part 982 describes program requirements for alternatives to the basic Housing Choice Voucher program.

Homeownership assistance offers a new option for families that receive Section 8 tenant-based assistance. As with the other special housing types, HUD does not provide any additional or separate funding for homeownership assistance under section 8(y). In general, a public housing agency (PHA) that administers section 8 tenant-based assistance has the choice whether to offer homeownership assistance as an option for qualified applicants and participants in the PHA's Housing Choice Voucher program. The PHA may choose to make homeownership assistance available for any qualified applicant or participant, or to restrict homeownership assistance to families or purposes defined by the PHA.

As required by law, the homeownership option is not available for units receiving section 8 project-based assistance. By law, homeownership under section 8(y) may only be provided for families receiving ''tenant-based assistance'' (42 U.S.C. 1437f(y)(1)). Integral to the tenant-based nature of the housing choice voucher program is the freedom-of-choice afforded to the participant family, regardless of whether the voucher is used for rental or homeownership assistance. A PHA may not reduce a family's choice by limiting the use of homeownership assistance to particular units, neighborhoods, developers, or lenders. For example, while HUD encourages PHAs to develop partnerships with lenders in order to assist the family in obtaining financing, the PHA may not require the family to use a certain lender or financing approach.

II. Overview of the Section 8 Homeownership Program

An overview of how the Section 8 homeownership program works follows. The details regarding the operation of the Section 8 homeownership option are provided elsewhere in the preamble and the regulatory text.

A. General

PHA administration of the Section 8 homeownership program differs from the tenant-based rental program in many ways. A PHA may use the certificate and voucher program funding already under Annual Contributions Contract (ACC) or new tenant-based Section 8 funding for rental or homeownership purposes. The PHA may opt to limit the number of Section 8 homeownership vouchers or not implement the homeownership option. There is no separate or additional funding for the homeownership program.

Generally, a PHA that administers Section 8 tenant-based assistance has the choice whether to offer the homeownership option. However, a PHA that elects to provide homeownership assistance must have the capacity to operate a successful Section 8 homeownership program. The PHA has the required capacity if it:

- Establishes a minimum homeowner downpayment requirement of at least 3 percent of the purchase price for participation in its Section 8 homeownership program, and requires that at least one percent of the purchase price come from the family's personal resources;
- Requires that financing for purchase of a home under its Section 8 homeownership program be provided, insured, or guaranteed by the state or Federal government, comply with secondary mortgage market underwriting requirements, or comply with generally accepted private sector underwriting standards; or
- Otherwise demonstrates in its Annual Plan that it has the capacity, or will acquire the capacity, to successfully operate a Section 8 homeownership program.

At the briefing of families selected to participate in the tenant-based Section 8 program, the PHA must discuss any homeownership option. Family participation in the homeownership program is voluntary. Although the homeownership program is open to both Section 8 applicants and participants, not every Section 8 tenant-based family may receive homeownership assistance. The PHA may limit the number of homeownership families and there are statutory family eligibility requirements such as a minimum level of income and a history of full-time employment. (The employment history requirement is not applicable to elderly and disabled families, and there is a modified income requirement for elderly and disabled families.) The program is generally limited to first-time homeowners. The PHA may add other local eligibility requirements such as participation in the Family Self-Sufficiency (FSS) program.

Once a family has been determined by the PHA to be eligible for Section 8 homeownership assistance, the family must attend homeownership counseling sessions. The counseling may be done

by PHA staff or another entity such as a HUD-approved housing counseling agency.

The PHA must advise the family of any deadlines on locating a home, securing financing, and purchasing the home. In establishing such time limits, the PHA should ensure that a family who has executed a sales contract is provided reasonable time to close on the purchase of the home. The PHA does not issue a voucher to the family. If the family is unable to locate a home to purchase within the PHA established deadlines, the PHA may issue the family a rental voucher.

A home may be purchased under the homeownership option if, at the time the PHA determines that the family is eligible to purchase the home with homeownership assistance, the home is either under construction or already existing. The home chosen by the family must pass an initial PHA Housing Quality Standards (HQS) inspection. (The HQS used for the Section 8 rental program is applicable to the homeownership program.) In addition, the family must hire an independent, professional home inspector to inspect the home selected by the family to identify physical defects and the condition of the major building systems and components. A copy of the independent inspection report must be given to the PHA. The family and the PHA must determine if any prepurchase repairs are necessary.

The family will enter into a contract of sale with the seller. The family must secure its own financing for the home purchase. There is no prohibition against using local or State Community Development Block Grant (CDBG) or other subsidized financing in conjunction with the Section 8 homeownership program. The PHA may prohibit certain forms of financing, require a minimum cash downpayment, or determine that the family cannot afford the proposed financing. (There are no Section 8 funds for home purchase financing. Instead, the Section 8 housing assistance will be provided monthly to help the family meet homeownership expenses.)

It is anticipated that mortgage lenders will consider the Section 8 assistance when underwriting the loan. If purchase of the home is financed with FHA-insured mortgage financing, such financing is subject to FHA mortgage insurance credit underwriting requirements. Otherwise, the underwriting standards of the individual lender and/or financing program will apply in cases where financing for purchase of the home is not FHA-insured.

Homeownership housing assistance payments may be made directly to the family or to lender on behalf of the family. (Two-party checks to the family and lender are not authorized because such a practice is incompatible with typical lending documents and practices.) Before the housing assistance begins, the family and the PHA must execute a ''statement of homeowner obligations.'' The Section 8 tenant-based housing assistance payments (HAP) contract, request for lease approval and lease addendum are not applicable to the Section 8 homeownership program.

The homeownership housing assistance payment will equal the lower of (1) the payment standard minus the total tenant payment or (2) the monthly homeownership expenses minus the total tenant payment. The family is responsible for the monthly homeownership expenses not reimbursed by the housing assistance payment. (Total tenant payment is higher of the minimum rent, 10 percent of monthly income, 30 percent of monthly adjusted income, or the welfare rent.) The PHA must use the utility allowance schedule and payment standard schedules applicable to the Section 8 voucher rental program.

After the homeownership housing assistance payments begin, the PHA will annually reexamine family income and composition and make appropriate adjustments to the amount of the monthly housing assistance payment. There is no requirement for the PHA to conduct an annual HQS inspection.

Except for elderly and disabled families, Section 8 homeownership assistance may only be paid for a maximum period of 15 years if the initial mortgage incurred to finance purchase of the home has a term that is 20 years or longer. In all other cases, the maximum term of homeownership assistance is 10 years. The PHA may not establish shorter or longer maximum terms. The maximum term for homeownership assistance applies to any member of the household who has an ownership interest in the unit during any time that homeownership payments are made, or is the spouse of any member of the household who has an ownership interest in the unit at the time homeownership payments are made.

The maximum term for homeownership assistance does not apply to an elderly family or a disabled family. In the case of an elderly family, this exception is only applied if the family qualifies as an elderly family at the commencement of homeownership assistance. In the case of a disabled family, this exception applies if at any time during receipt of homeownership assistance the family qualifies as a disabled family. If, during the course of homeownership assistance, the family ceases to qualify as a disabled or elderly family, the maximum term becomes applicable from the date homeownership assistance commenced. However, such a family must be provided at least 6 months of homeownership assistance after the maximum term becomes applicable (provided the family is otherwise eligible to receive Section 8 homeownership assistance).

PHAs shall recapture a percentage of homeownership assistance defined in the regulations upon the sale or refinancing of the home. Sales proceeds that are used by the family to purchase a new home with Section 8 homeownership assistance are not subject to recapture. Further, a family may refinance to take advantage of lower interest rates, or better mortgage terms, without any recapture penalty. Only those proceeds realized upon refinancing that are retained by the family (for example during a ''cash-out'' of the refinanced debt) are subject to the program recapture provision.

A PHA opting to administer the Section 8 homeownership program must establish local homeownership policies. The following policies must be described in the PHA administrative plan: any additional PHA requirements for participation in its Section 8 homeownership program (§ 982.626(b)); PHA maximum times to locate and purchase a home (§ 982.629(a)); PHA policy about issuing the family a rental voucher if the family does not find a suitable house to buy (§§ 982.629(c)); any minimum cash downpayment or equity requirements (§ 982.632); any requirements for financing purchase of a home, including requirements concerning qualification of lenders (for example, prohibition of seller financing or case-by-case approval of seller financing), terms of financing (for example, a prohibition of balloon payment mortgages and establishment of a minimum homeowner equity requirement), and financing affordability (§ 982.632); any PHA requirements for continuation of homeownership assistance (§ 982.633(b)(8)); PHA policy for determining the amount of allowable homeownership expenses (§ 982.635(c)); PHA policy for payment of the HAP to the family or lender (§ 982.635(d)); and any PHA policies that prohibit more than one move by the family during any one year period (§ 982.637(a)(3)).

B. Who Is Assisted

1. General

The homeownership option is used to assist families in two types of housing:

- A unit owned by the family—One or more family members hold title to the home.
- A cooperative unit—One or more family members hold membership shares in the cooperative.

2. Assistance for Homeowner

Before enactment of Section 8(y), Section 8 assistance could be paid on behalf of a renter or cooperative member, but not for a family that owns fee title to its home. Section 8 rental assistance terminates when the family takes title to the home. By contrast, Section 8(y) is specifically designed to authorize assistance for a ''homeowner''—a family that owns title to the home.

The law provides that the public housing agency may provide assistance for:

- A ''first-time homeowner''; and
- A family that owns or is acquiring shares in a cooperative.

By law and this rule, the homeownership option is designed to promote and support homeownership by a ''first-time'' homeowner—a family that moves for the first time from rental housing to a family-owned home. Section 8 payments supplement the family's own income to facilitate the transition from rental to homeownership. The initial availability of these assistance payments helps the family pay the costs of homeownership, and may provide additional assurance for a lender, so that the family can finance purchase of the home.

Section 8 homeownership assistance for cooperative homeowners is specifically authorized for both a family that is a first time cooperative homeowner and a family that owned its cooperative unit prior to receiving Section 8 assistance. Cooperative homeowners were eligible for tenant-based assistance prior to passage of the Public Housing Reform Act.

To qualify as a ''first-time homeowner,'' the assisted family may not include any person who owned a ''present ownership interest'' in a residence of any family member during the three years before the commencement of homeownership assistance for the family (regulatory definition at § 982.4; statutory definition at 42 U.S.C. 1437f(y)(7)(A)). Such interest includes ownership of title or of cooperative membership shares. This rule defines the term ''first-time homeowner'' to include a single parent or displaced homemaker who, while married, owned a home with his or her spouse, or resided in a home owned by his or her spouse.

The restriction to ''first-time'' homeowners is intended to direct homeownership assistance to ''new'' homeowners who may be unable to purchase a home without this assistance, but to discourage use of Section 8 subsidy on behalf of families who have achieved homeownership independently, without benefit of the Federal Section 8 subsidy. In addition, the PHA may not commence homeownership assistance for a family if any family member has previously received assistance under the homeownership option, and has defaulted on a mortgage securing debt incurred to purchase the home (see § 982.627(e) of this final rule).

3. Assistance for Cooperative Member

Section 8(y) authorizes homeownership assistance for a family that ''owns or is acquiring shares in a cooperative.'' Thus, the law allows assistance for a family that already owns cooperative shares before commencement of Section 8 homeownership assistance, not just for a family that acquires cooperative shares for the first time with the support of such assistance. In this respect, the law treats ownership of cooperative membership different from ownership of title to the home. In the latter case, the law authorizes assistance for a first time homeowner. The rule specifies that cooperative membership shares may be purchased at or before commencement of homeownership assistance (see the definition of ''membership shares'' at § 982.4).

Before this rule, HUD has provided essentially the same Section 8 rental assistance for a cooperative member as for a family that chooses to rent a unit in conventional rental housing. Since the origin of the Section 8 program, the law has provided that with respect to members of a cooperative, ''rent'' means the charges under the occupancy agreements between the members and the cooperative (42 U.S.C. 1437f(f)(5)). Thus Section 8 assistance is paid to cover the difference between the cooperative occupancy charges and the income-based tenant rent.

Under this final rule, the PHA may provide assistance for a cooperative member either under the new homeownership option or under the special procedures for cooperative housing within the Section 8 tenant-based rental program (§ 982.619). Each form of assistance is designated as a separate special housing type under the Section 8 voucher program. The PHA may elect to offer either or both of these forms of cooperative assistance in its voucher program, and to define the appropriate role of each available form of cooperative assistance in the local Section 8 program.

In the new homeownership option, Section 8 assistance is paid on behalf of a cooperative member, but there is no requirement that the cooperative enter into any agreement or any direct relationship with the PHA that provides Section 8 assistance for the cooperative member. The cooperative is not asked to modify any ordinary requirement for cooperative membership or occupancy, nor asked to modify any requirement concerning assessment or collection of the cooperative carrying charge, maintenance of the unit or sanctions for violation of cooperative requirements.

For clarity, in describing requirements for homeownership assistance to a cooperative member, the new rule supplements existing definitions. The term ''cooperative'' refers to housing owned by a corporation or association, and where a member of the corporation or association has the right to reside in a particular unit, and to participate in management of the housing (§ 982.4). The rule also adds the following two new definitions:

- Cooperative member. A family of which one or more members owns membership shares in a cooperative.
- Membership shares. Shares in a cooperative. By owning such cooperative shares, the share-owner has the right to reside in a particular unit in the cooperative, and the right to participate in management of the housing.

Prior to the enactment of the Public Housing Reform Act, a family could only receive assistance in a cooperative that had adopted requirements to maintain continued affordability for lower income families after transfer of a member's interest. There is now no such statutory affordability requirement for Section 8 tenant-based assistance to cooperative residents—whether such assistance is provided under the rental assistance program or under the new Section 8(y) homeownership option—and there is no such requirement under this rule.

HUD believes that such a continuing affordability requirement would restrict housing choice of Section 8 families among available cooperative units. Such a requirement would also diminish a major advantage of homeownership—the incentive for an assisted family to maintain and improve the housing and to benefit from appreciation upon a future sale of the home. This rule

removes the federal mandate for existing continuing affordability requirements for rental assistance in cooperative housing.

In addition, this rule modifies the allocation of maintenance responsibility between the cooperative and the family. In the regular rental assistance program, the owner is responsible for most maintenance of a unit. Under the old rule, this principle also applies to rental assistance for Section 8 cooperative housing. However, in a conventional cooperative, the member is generally responsible for maintenance of the individual apartment, and the cooperative entity is only responsible for maintenance of common areas and systems. The cooperative agreement defines the division of maintenance obligations between the member and the cooperative.

The existing regulation is amended by this rule to reflect the normal division of maintenance responsibility in cooperative housing for which rental (not homeownership) assistance is being provided (§ 982.619(d)(3)). The revised rule provides that the family is responsible for a breach of the HQS caused by failure to perform maintenance in accordance with the cooperative occupancy agreement between the family and the cooperative. The PHA must take prompt and vigorous action to enforce the family maintenance obligation, and may terminate assistance for failure to perform maintenance in accordance with the cooperative occupancy agreement (§ 982.619(d)(4)).

During the term of the HAP contract between the PHA and the cooperative, the unit and premises must be maintained in accordance with the Section 8 HQS. If the contract unit and premises are not properly maintained, the PHA may exercise all available remedies, regardless of whether the family or the owner is responsible for such breach of the HQS. PHA remedies for breach of the HQS include recovery of overpayments, suspension of housing assistance payments, abatement or other reduction of housing assistance payments, termination of housing assistance payments and termination of the HAP contract (§ 982.619(d)(1)).

In the new homeownership cooperative option under Section 8(y), there is no HAP contract (between the PHA and the cooperative as unit ''owner'') and no lease (between the cooperative and the family). The unit is only inspected before the commencement of assistance. There is no requirement that the family or cooperative assure that the unit continues to satisfy HQS during the continuation of assisted occupancy. Consequently, there is no need to specify any allocation of maintenance responsibility between the cooperative and the family.

4. Lease-Purchase Agreements

The law and rule explicitly permit Section 8 homeownership assistance for a family that purchases a home that the family previously occupied under a ''lease-purchase agreement''—generally a lease with option to purchase. Section 8(y) provides that the PHA may provide Section 8 homeownership assistance for an eligible family that purchases ''a unit under a lease-purchase agreement'' (42 U.S.C. 1437f(y)(1)).

Prior to enactment of the Public Housing Reform Act, a family that received Section 8 rental subsidy could exercise an option to purchase the unit under a lease-purchase agreement. However, there were problems in applying the rent reasonableness requirements and, as noted above, Section 8 rental subsidy terminated when the family took title to the home. Thus the prospective loss of subsidy discouraged the family from taking title, and moving from rental to homeownership. However, Section 8(y) now provides a vehicle for continuation of Section 8 assistance after the family takes title to the home.

To qualify as a first-time homeowner (as noted above) the family may not have owned title to a principal residence in the last three years. The rule specifies, however, that the right to purchase title under a lease-purchase agreement does not constitute a prohibited ''present ownership interest.'' A family that holds an option to purchase may exercise the option and receive assistance under the new homeownership option.

A new § 982.317 is added to describe the requirements for lease-purchase agreements. The housing assistance payment for a lease-purchase unit may not exceed the amount that would be paid on behalf of the family if the rental unit was not subject to a lease-purchase agreement. Any ''homeownership premium'' included in the rent to the owner that would result in a higher subsidy amount than would otherwise be paid by the PHA must be absorbed by the family. ''Homeownership premium'' is defined as an increment of value attributable to the value of the lease-purchase right or agreement such as an extra monthly payment to accumulate a downpayment or reduce the purchase price. Families are permitted to pay an extra amount out-of-pocket to the owner for purchase related expenses.

Section 982.317 also provides that in determining whether the rent to owner for a unit subject to a lease-purchase agreement is a reasonable amount, any ''homeownership premium'' paid by the family to the owner must be excluded when the PHA determines rent reasonableness.

Lease-purchase agreements are considered rental, and all the normal tenant-based Section 8 rental rules are applicable. The family will be subject to the homeownership regulatory requirements at the time the family is ready to exercise the homeownership option under the lease-purchase agreement. At that point in time, the PHA will determine whether the family is eligible for Section 8 homeownership assistance (e.g., whether the family meets the income and employment thresholds and any other criteria established by the PHA). If determined eligible for a homeownership voucher, the family will then arrange for an independent home inspection, attend counseling sessions, and obtain financing. Homeownership assistance will begin when the family purchases the home and after all of the requirements of the homeownership option are met.

C. How to Qualify for Homeownership Assistance

1. General

To qualify for assistance under the homeownership option, a family must meet the general requirements for admission to the PHA's Section 8 tenant-based voucher program, and additional special requirements for homeownership assistance (§ 982.627). The PHA may not provide homeownership assistance for a family unless the PHA determines that the family satisfies all of the following initial requirements at commencement of homeownership assistance for the family:

- The family satisfies the minimum income requirements described in § 982.627(c) of the final rule;
- The family satisfies the employment requirements described in § 982.627(d) of the final rule;
- The family has not defaulted on a mortgage securing debt to purchase a home under the homeownership option (see § 982.627(e) of the final rule);
- Except for cooperative members who have acquired cooperative membership shares prior to the commencement of homeownership assistance, no family member has a present ownership interest in a residence at the commencement of

homeownership assistance for the purchase of any home;

- Except for cooperative members who have acquired cooperative membership shares prior to the commencement of homeownership assistance, the family has entered into a contract of sale in accordance with § 982.631(c);
- The family satisfies any other initial requirements established by the PHA.

2. Minimum Income Requirement

To enter the Section 8 voucher program, a family must be income-eligible (i.e., below the maximum income cutoff). However, to qualify for the homeownership option in the voucher program, the family must demonstrate sufficient income to meet a minimum income standard, which is intended to assure that a family will have sufficient income to pay homeownership and other family expenses not covered by the Section 8 subsidy.

Section 8(y) provides that a family may not receive homeownership assistance unless the family demonstrates that gross monthly income is at least two times the voucher ''payment standard'' or an ''other amount'' established by the Secretary (Section 8(y)(1)(B), 42 U.S.C. 1437f(y)(1)(B)).

At the request of several public commenters, the final rule establishes a national minimum income requirement that is equal to 2,000 hours of annual full-time work at the Federal minimum wage. In response to public comment, the final rule also provides that the adult family members who will own the home at the commencement of the homeownership assistance (as opposed to only the head of household or spouse) must have annual income (gross income) that is not less than the minimum income requirement.

The law does not specify whether the minimum income requirement is only applied at initial qualification for commencement of homeownership assistance, or is also a continuing requirement that must be maintained so long as the family is receiving assistance under the homeownership option. (By contrast, the law explicitly provides that the statutory employment requirement only applies at the time the family initially receives homeownership assistance.) HUD has decided that any minimum income requirement will only be applied to determine initial qualification to purchase a particular home, not as a continuing requirement. This policy gives assurance to the family, and possibly to a potential mortgage lender, that the stream of homeownership assistance payments will not be disrupted because of a drop in family income. Any minimum income requirement will only apply again if the family purchases a subsequent home with Section 8 homeownership assistance.

The law provides that the income counted in meeting any minimum income requirement under the homeownership option must come from sources other than welfare assistance. Thus, PHAs may limit homeownership assistance to families with substantial non-welfare income available to pay housing and non-housing costs. However, the law provides that HUD may count welfare assistance in determining availability of voucher homeownership assistance for an elderly or disabled family (in which the household head or spouse is an elderly or disabled person). (The term ''welfare assistance'' is defined in HUD's regulations at § 5.603, thereby identifying the types of income that may not be included in determining whether a family meets the homeownership minimum income standard.)

The rule also clarifies that the requirement to disregard welfare assistance income only applies in determining whether a family has the minimum income to qualify for homeownership assistance. However, welfare assistance income is counted for other program purposes: in determining income-eligibility for admission to the voucher program, in calculating the amount of the family's total tenant payment (gross family contribution); and in calculating the amount of the monthly homeownership assistance payment for a family assisted under the homeownership option.

Under the law, HUD may permit PHAs to count welfare assistance income of an ''elderly family'' or a ''disabled family''—a family whose head or spouse is elderly or disabled (definitions of these terms are found in section 3(b)(3)(B) of the 1937 Act; 42 U.S.C. 1437a(b)(3)(B))—in determining whether a family has the minimum income to qualify for homeownership assistance. On consideration of this issue, and recognizing the special needs of such families, the rule requires that the PHA count welfare assistance of an elderly or disabled family in determining whether the family meets the minimum income requirement for homeownership assistance. This requirement to count welfare assistance in determining whether a family has the minimum income to qualify for homeownership assistance only applies, however, to families which satisfy the statutory definition of an elderly or disabled family. In particular, as required by the law, the requirement to count welfare assistance income does not apply in the case of a family that includes a disabled person other than the household head or spouse (and where the household head or spouse are not elderly or disabled).

3. Family Employment

Section 8(y) provides that, except as provided by HUD, the family must be able to demonstrate, at the time that the family initially receives homeownership assistance, that one or more adult members of the family have achieved employment for the time period established by HUD (42 U.S.C. 1437f(y)(1)(B)).

The final rule requires that the family must demonstrate that one or more adult members of the family who will own the home at commencement of homeownership assistance:

- Is currently employed on a full-time basis (the term ''full-time employment'' is defined to mean not less than an average of 30 hours per week); and
- Has been continuously so employed during the year before commencement of homeownership assistance for the family.

The final rule provides that the PHA has the discretion to determine whether (and to what extent) an employment interruption is considered permissible in satisfying the employment requirement. The final rule also clarifies that the PHA may consider successive employment during the one-year period and self-employment in a business.

The employment requirement does not apply to an elderly family or a disabled family. Furthermore, if a family, other than an elderly family or a disabled family, includes a person with disabilities, the PHA must grant an exemption from the employment requirement if the PHA determines that an exemption is needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

4. Discussion of Other Requirements

a. *Homeownership counseling.* Section 8(y) provides that a family that receives assistance under the homeownership option must participate in a homeownership and housing counseling program provided by the PHA (42 U.S.C. 1437f(y)(1)(D)). The rule provides that, before commencement of homeownership assistance for a family, the family must attend and satisfactorily complete the pre-assistance homeownership and housing counseling program required by the PHA (pre-assistance counseling) (§ 982.630).

Suggested topics for the PHA-required pre-assistance counseling program include:

- Home maintenance (including care of the grounds);
- Budgeting and money management;
- Credit counseling;
- How to negotiate the purchase price of a home;
- How to obtain homeownership financing and loan preapprovals, including a description of types of financing that may be available, and the pros and cons of different types of financing;
- How to find a home, including information about homeownership opportunities, schools, and transportation in the PHA jurisdiction;
- Advantages of purchasing a home in an area that does not have a high concentration of low-income families and how to locate homes in such areas;
- Information on fair housing, including fair housing lending and local fair housing enforcement agencies; and
- Information about the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*) (RESPA), state and Federal truth-in-lending laws, and how to identify and avoid loans with oppressive terms and conditions.

The PHA may adapt subjects covered in pre-assistance counseling to local circumstances and the needs of individual families. The PHA may also offer additional counseling after commencement of homeownership assistance (ongoing counseling). If the PHA offers a program of ongoing counseling for participants in the homeownership option, the PHA has the discretion to determine whether the family is required to participate in the ongoing counseling.

The counseling may be provided by the PHA, another entity such as a HUD-approved housing counseling agency, or by both the PHA and another entity. HUD-approved housing counseling agencies provide free counseling. The HUD field office will provide the PHA with a list of the HUD-approved counseling agencies. If the PHA is not using a HUD-approved housing counseling agency to provide the counseling for families participating in the homeownership option, the PHA should ensure that its counseling program is consistent with the homeownership counseling provided under HUD's Housing Counseling program.

Experience with low-income homeownership programs has demonstrated that quality counseling is imperative for successful homeownership and prevention of mortgage defaults. In addition, counseling will assist families in making informed decisions when selecting the home they wish to purchase.

b. *Financing purchase of home.* Families selected to participate in the Section 8 homeownership program must secure their own financing. If the family applies for a mortgage or loan (including an FHA mortgage), all regular lender underwriting and property inspection requirements apply.

The rule provides that a PHA may establish requirements for financing purchase of a home to be assisted under the homeownership option (§ 982.632). All PHA financing or affordability requirements must be described in the PHA administrative plan. The PHA may also set requirements concerning qualifications of lenders and terms of financing. For example, a PHA may determine that mortgages with balloon payments and certain kinds of variable interest rate loans are not in the best interest of the family because it is unlikely the family could afford the payments when the balloon comes due or interest rates rise. In addition, the PHA could opt to prohibit seller financing, or to only allow seller financing in cases when the seller is a nonprofit or the purchase price can be clearly supported by an independent appraisal.

Another purpose of the PHA financing review would be to determine whether the monthly mortgage or loan payment is affordable after considering other family expenses. The PHA may disapprove proposed financing, refinancing or other debt if the PHA determines that the debt is unaffordable. PHAs may wish to establish minimum initial downpayment requirements to ensure that the family has a personal financial stake in the home, thus helping to minimize mortgage loan defaults (for example, the PHA may require that the family use its own resources to make the entire initial downpayment, or a percentage of the initial downpayment).

c. *Home inspections.* Two kinds of physical inspections are required in the homeownership option (in addition to, and separate from, any lender required inspections): an HQS inspection by the PHA and an independent professional home inspection by an inspector that is used in the private market by homebuyers. (§ 982.631).

The PHA inspection is the normal initial HQS inspection conducted by the PHA for the tenant-based rental assistance program. This inspection will indicate the current physical condition of the unit and any repairs necessary to ensure that the unit is safe and otherwise habitable. The PHA HQS inspection does not include an assessment of the adequacy and life span of the major building components, building systems, appliances and other structural components.

The only difference between the HQS inspection requirements for the tenant-based rental and homeownership programs is that the PHA is not required by the regulation to conduct annual inspections. The exemption from annual HQS homeownership inspections is authorized by the statute. The initial (prior to the commencement of housing assistance) HQS inspection is the only PHA inspection required for homeownership units during the entire time the family is receiving Section 8 homeownership assistance.

The other inspection required by this final rule is a statutory requirement that is consistent with private real estate practice. The independent professional home inspection is conducted by a private market home inspector (not PHA staff) that is experienced and qualified to conduct prepurchase inspections for homebuyers. The purpose of the home inspection is the identification of home defects and an assessment of the adequacy and life span of the major building components, building systems, appliances and other structural components. The requirement for an inspection arranged by the buyer and satisfactory to the buyer is a typical contingency clause in contracts of sale. The Section 8 family selects the home inspector and pays the home inspector's fees. (The source of funds for family payment of the home inspection may be a gift, family savings or an inheritance, or sources other than family savings.) A copy of the inspection report is provided to the family and the PHA.

Although the PHA may not require the family to use a particular inspector, the PHA may establish standards for qualification of the home inspector selected by the family. For example, the PHA may require the use of a home inspector certified by the American Society of Home Inspectors, or a similar national organization.

The PHA must review the home inspector's report to determine whether repairs are necessary prior to purchase, and to generally assess whether the purchase transaction makes sense in light of the overall condition of the home and the likely costs of repairs and capital expenditures. For example, the home inspector's report might reveal foundation instability, and a defective roof and heating system that needs immediate replacement at great cost. Confronted with these facts the PHA would discuss the inspection results

with the family and decide whether to disapprove the unit for assistance under the homeownership option because of the major physical problems and substantial correction costs, or whether it is feasible to have the necessary repairs accomplished prior to sale.

d. *Switching from Section 8 homeownership voucher assistance to rental voucher assistance, and vice-versa, after a mortgage default and at other times.* There are a number of circumstances under which a family may switch between rental and homeownership assistance under the voucher program. Various scenarios are described below.

- A Section 8 participant receiving voucher assistance may request a PHA operating a homeownership program to determine whether the family is eligible for Section 8 homeownership assistance. If the family is determined eligible for homeownership assistance, the PHA may authorize the family to search for a home to purchase. The family would continue to receive rental assistance until the family vacates the rental unit (consistent with the lease).
- A Section 8 applicant selected from the PHA waiting list goes to the briefing and learns of the homeownership option. The PHA determines the family is eligible for homeownership and the family is given two months to find a home to purchase. At the end of the two months the PHA extends the search period for an additional month because the family has found a unit. However, the purchase never occurs due to problems qualifying for a loan. The family opts to rent an apartment and try homeownership at a later time after they have increased their savings. The PHA issues the family a rental voucher.
- The family purchases a home under the Section 8 homeownership option. After several years the family decides that they prefer to live in a rental apartment. If there is no mortgage loan default and the family has met all obligations under the Section 8 program, the PHA may issue the family a rental voucher. The family must sell the home before the PHA may provide rental assistance. If there is a default on a mortgage (whether FHA-insured or non-FHA), the PHA may exercise the PHA option to issue the family a rental voucher only if the family vacates the home and conveys the title in accordance with § 982.638(d) (assuming the family has met all the family obligations under the Section 8 program other than not causing a mortgage default).

e. *Portability.* Generally, a family determined eligible for homeownership assistance by the initial PHA may purchase a unit outside of the initial PHA's jurisdiction, if the receiving PHA is administering a voucher homeownership program and is accepting new homeownership families. In general, the portability procedures for the Housing Choice Voucher program (described in §§ 982.353 and 982.355) apply to the homeownership option and the administrative responsibilities of the initial and receiving PHA are not altered except that some administrative functions (e.g, issuance of a voucher or execution of a tenancy addendum) do not apply to the homeownership option.

The receiving PHA may absorb the homeownership family or bill the initial PHA for the homeownership housing assistance using the normal portability billing process. Communications between the initial and receiving PHA are necessary. As is the case for Section 8 rental portable families, all of the receiving PHA's administrative policies are applicable to the homeownership family. The family will be required to attend the briefing and counseling sessions required by the receiving PHA. The receiving PHA, not the initial PHA, will determine whether the financing for and the physical condition of the unit are acceptable.

f. *Buying another home with Section 8 assistance.* A homeownership family may purchase another home with Section 8 assistance provided there is no mortgage loan default. The family must sell its current home in order to purchase another with homeownership assistance.

As noted above, PHAs shall recapture a percentage of homeownership assistance defined in the regulations upon the sale or refinancing of the home. Proceeds invested in the purchase of another home are exempt from recapture. Most of the homeownership requirements applicable to the first home purchase remain applicable to a subsequent purchase. For example, the family must once again meet the employment threshold. The necessity of any counseling will be determined by the PHA. An independent home inspection will be conducted and the PHA will determine the acceptability of the financing. The maximum term of homeownership assistance applies to the cumulative time the family receives homeownership assistance. The only exception to eligibility requirements applicable to initial receipt of homeownership assistance is that the family need not meet the first-time homebuyer requirement (See § 982.637(b)).

g. *Applicability of the Section 8 tenant-based voucher requirements to the homeownership option.* Section 982.641 details the portions of the voucher regulations that apply to the homeownership special housing type. PHAs should carefully review this section of the regulations.

It is noted that all civil rights laws applicable to the Section 8 voucher program are applicable to the homeownership program. PHAs must comply with all equal opportunity and nondiscrimination requirements imposed by contract or Federal law. In addition, PHAs are reminded that ''finders-keepers'' applies to homeownership assistance; PHAs may not steer families to particular units or neighborhoods. Further, as in the tenant-based rental voucher program, PHAs must provide assistance to expand housing opportunities. The PHA briefing for both rental and homeownership families must explain:

- Where the family may lease or purchase a unit;
- How portability works (if the family qualifies to lease or purchase a unit outside the PHA jurisdiction under portability procedures); and
- The advantages of moving to an area that does not have a high concentration of poor families (if the family is currently living in a high poverty census tract within the jurisdiction of the PHA).

Further, if the family includes any person with disabilities, the PHA must take appropriate steps to ensure effective communication during the briefing in accordance with 24 CFR 8.6.

h. *Link between Section 8 homeownership and the Family Self-Sufficiency (FSS) Program.* PHAs may wish to link Section 8 homeownership with the FSS program. For example, participation in the FSS program could be a PHA eligibility requirement. The PHA may also opt to incorporate the homeownership goal into the family's FSS contract of participation so any FSS escrow could be advanced for purchase of a home or home maintenance/improvement purposes. It is noted that FSS families must meet the homeownership income and employment thresholds.

i. *PHA determination of ''homeownership expense''.* Section 982.635(c) details the expenses that the PHA will include when determining the family's homeownership expenses. The principal and interest amount is the debt service amount for the initial (original) mortgage debt, any refinancing of such debt, and any mortgage insurance premium. The utility allowance is the same utility allowance schedule as used in the rental voucher program. The PHA allowance for

maintenance expenses is the amount the PHA thinks is appropriate for routine maintenance for a home.

The PHA allowance for major repairs and replacements is the amount the PHA thinks is appropriate for a replacement ''reserve'' for a home. If a member of the family is a person with disabilities, such debt may include debt incurred by the family to finance costs needed to make the home accessible for such person, if the PHA determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person, in accordance with 24 CFR part 8.

These allowances for maintenance expenses and major repairs and replacements should not be based on the condition of the home, similar to how utility allowances work. It is recommended that a PHA contact counseling agencies, local realtors and relevant national organizations for advice on the appropriate level for these local allowances. (Families are not required to put the amount set aside for these two maintenance allowances in the bank or in escrow. Further, it is not expected that the monthly amounts for these allowances will cover all maintenance and capital expenditures.)

III. Summary of Changes Made by this Final Rule to the April 30, 1999 Proposed Rule

The following discussion summarizes the most significant differences between the April 30, 1999 proposed rule and this final rule. The changes made in response to public comment are discussed in greater detail in sections IV., V., and VI. of this preamble.

1. *Revised definition of ''net family assets'' (§ 5.603(d)).* In response to public comment, this final rule revises the definition of ''net family assets'' located in 24 CFR 5.603(d) to exclude the value of a home currently being purchased with Section 8 homeownership assistance. This exclusion is limited to the first 10 years after the purchase date of the home.

2. *Use of the term ''welfare assistance'' rather than the term ''public assistance'' (§ 982.4(a)).* The final rule replaces the proposed definition of the term ''public assistance'' with a cross-reference to the term ''welfare assistance'', which is defined at 24 CFR 5.603. The proposed definition of ''public assistance'' was redundant of HUD's existing definition of ''welfare assistance.'' Further, the use of the term ''welfare assistance'' in this final rule will help to ensure the consistent use of defined terms throughout HUD's regulations.

3. *Revised definition of the term ''cooperative'' (§ 982.4(b)).* In response to public comment, the definition of the term ''cooperative'' in the final rule is no longer limited to housing owned by a nonprofit entity.

4. *Revised definition of the term ''first-time homeowner'' (§ 982.4(b)).* The definition of ''first-time homeowner'' has been revised to clarify that any family who has owned any residential property during the preceding three years (regardless of whether its is the family's principal residence) does not meet the definition of a ''first-time'' homeowner. The final rule also clarifies that a single parent or displaced homemaker who, while married, owned a home with a spouse (or resided in a home owned by a spouse) is considered a ''first-time homeowner'' for purposes of the Section 8 homeownership option.

5. *Separate definition of the term ''Present ownership interest'' (§ 982.4(b)).* For purposes of clarity, this final rule provides a separate definition of the term ''present ownership interest.'' The proposed rule had defined this term within the definition of the term ''first-time homeowner.''

6. *Overview of special housing types (§ 982.601).* This final rule reorganizes and makes several clarifying changes to § 982.601, which provides an overview of the special housing types. For example, the changes clarify that the provisions of subpart M of 24 CFR part 982 apply solely to the specific special housing type noted in the heading of each regulatory section. Further, the revisions clarify that the PHA may not set aside program funds or program slots for special housing types or for a specific special housing type. These technical changes do not establish or modify existing program requirements, but are designed solely to make § 982.601 easier to understand.

7. *PHA capacity to operate successful Section 8 homeownership program (§ 982.625(d)).* This final rule adds a new § 982.625(d), which requires that a PHA wishing to provide Section 8 homeownership assistance must have the capacity to operate a successful homeownership program. The PHA has the required capacity if it either:

- Establishes a minimum homeowner downpayment requirement of at least 3 percent of the purchase price for participation in its Section 8 homeownership program, and requires that at least one percent of the purchase price come from the family's personal resources;
- Requires that financing for purchase of a home under its Section 8 homeownership program be provided, insured, or guaranteed by the state or Federal government, comply with secondary mortgage market underwriting requirements, or comply with generally accepted private sector underwriting standards; or
- Otherwise demonstrates in its Annual Plan that its has the capacity, or will acquire the capacity, to successfully operate a Section 8 homeownership program. A PHA may acquire this capacity by either partnering with an entity experienced in reviewing homeownership financing or by hiring staff with such experience.

The final rule also makes a conforming change to HUD's PHA Plan regulations at 24 CFR part 903. The revision is necessary so that the capacity requirement can be applied fully to high-performing PHAs wishing to provide Section 8 homeownership assistance. The final rule amends § 903.11 to provide that the information required by § 903.7(k) pertaining to homeownership programs must be included in the PHA's streamlined Annual Plan submission only to the extent that the PHA participates in homeownership programs under section 8(y) of the 1937 Act.

8. *Reorganization of Eligibility requirements (§§ 982.626, 982.627, and 982.628).* For purposes of clarity, this final rule reorganizes the eligibility requirements for participation in the homeownership option located in §§ 982.626 and 982.627 of the proposed rule). Section 982.626 of the final rule describes the initial requirements that must be satisfied before the commencement of homeownership assistance. Section 982.627 of the final rule sets forth the eligibility requirements (such as the minimum income and employment requirements) for families wishing to participate in the homeownership option. Section 982.628 of the final rule describes the eligibility requirements for homes purchased with homeownership assistance. With the exception of those changes described elsewhere in this preamble, this reorganization is not substantive, but is intended to clarify these regulatory requirements. The substance of proposed § 982.628 and subsequent regulatory sections have been redesignated to conform to the establishment of new § 982.628 (for example, proposed § 982.628 has become § 982.629 of this final rule, proposed § 982.630 has become § 982.631, etc.).

9. *Homeownership assistance as a reasonable accommodation (§ 982.627(b)(3)).* This final rule revises § 982.627 to clarify that a family

containing a family member with disabilities who requires homeownership assistance as a reasonable accommodation is eligible for the homeownership option, regardless of whether the family is a cooperative member or a first-time homeowner (as those terms are defined at § 982.4).

10. *Prohibition on the provision of homeownership assistance to family with present ownership interest (§ 982.627(a)(6)).* This final rule clarifies that, except for cooperative members who have acquired cooperative membership shares prior to the commencement of homeownership assistance, no family member may have a present ownership interest in a residence at the commencement of homeownership assistance for the purchase of any home.

11. *Establishment of national minimum income requirement (§ 982.627(c)).* At the request of several public commenters, the final rule establishes a national minimum income requirement that is equal to 2,000 hours of annual full-time work at the Federal minimum wage. A PHA may not establish a minimum income requirement in addition to the minimum income standard established by this rule.

12. *Fulfilling the minimum income requirement (§ 982.627(c)(1)).* In response to public comment, the final rule provides that the adult family members who will own the home at the commencement of the homeownership assistance (as opposed to only the head of household or spouse) must have annual income (gross income) that is not less than the minimum income requirement.

13. *Establishment of national employment requirement (§ 982.627(d)).* At the request of several public commenters, this final rule establishes a uniform national employment requirement. For purposes of uniformity, the final rule defines ''full-time employment'' to mean not less than an average of 30 hours per week. Further, the final rule adds a new § 982.627(d)(4), which provides that a PHA may not establish an employment requirement in addition to the employment standard established by the final rule.

14. *Fulfilling the employment requirement (§ 982.627(d)(1)).* The final rule provides that one or more adult members of the family who will own the home at commencement of homeownership assistance (not just the head of household or spouse) must fulfill the employment requirement.

15. *Interruptions in employment (§ 982.627(d)(2)).* The final rule provides that the PHA has the discretion to determine whether (and to what extent) an employment interruption is considered permissible in satisfying the employment requirement. The final rule also clarifies that the PHA may consider successive employment during the one-year period and self-employment in a business.

16. *Eligible homes for purchase under the homeownership option (§ 982.628(a)(2)).* The final rule provides that a home is eligible for purchase under the homeownership option if, at the time the PHA determines that the family is eligible to purchase the home with homeownership assistance, the home is either under construction or already existing.

17. *Provision of homeownership counseling (§ 982.630).* The final rule clarifies that, although the PHA must require pre-assistance homeownership counseling, the PHA is not itself obligated to provide the required counseling.

18. *Housing counseling topics (§ 982.630(b)).* The final rule clarifies that the PHA-required counseling program should ''generally'' cover the topics listed in § 982.629(b).

19. *Fair housing as a suggested counseling topic (§ 982.630(b)(8)).* The final rule expands the list of suggested housing counseling topics to include information on fair housing, fair housing lending practices, and local fair housing enforcement agencies.

20. *RESPA and predatory lending as suggested counseling topics (§ 982.630(b)(9)).* The final rule expands the list of suggested housing counseling topics to include information about the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*) (RESPA), state and Federal truth-in-lending laws, and how to identify and avoid loans with oppressive terms and conditions.

21. *Revision of housing counseling topics (§ 982.630(c)).* The final rule provides that a PHA may revise the subjects covered in the pre-assistance counseling to address local circumstances and the needs of individual families.

22. *Housing counseling standards (§ 982.630(e)).* The final rule provides that, if the PHA is not using a HUD-approved housing counseling agency to provide the counseling for families participating in the homeownership option, the PHA should ensure that its counseling program is consistent with the homeownership counseling provided under HUD's Housing Counseling program.

23. *Seller certification in contract of sale that the seller is not debarred, suspended, or subject to a limited denial of participation (§ 982.631(c)(2)(v)).* In response to public comment, the final rule provides that the contract of sale must contain a seller certification that the seller is not debarred, suspended, or subject to a limited denial of participation under 24 CFR part 24.

24. *Applicability of Federal Housing Administration (FHA) underwriting standards for non-FHA insured loans (§ 982.632).* The final rule removes the requirement that purchases of homes financed without FHA mortgage insurance must, nonetheless, comply with the basic underwriting requirements for FHA-insured single family homes. However, the final rule continues to provide that if the purchase of the home is financed with FHA mortgage insurance, such financing is subject to FHA mortgage insurance requirements.

25. *PHA approval of refinancing agreements or securing of additional financing on the home (§ 982.632(c)).* The final rule provides that the PHA may establish requirements or other restrictions concerning debt secured by the home.

26. *PHA disapproval of lender qualifications and loan terms (§ 982.632(d)).* This final rule clarifies that the PHA may review lender qualifications and the loan terms before authorizing homeownership assistance. The PHA may disapprove proposed financing, refinancing or other debt if the PHA determines that the debt is unaffordable, or if the PHA determines that the lender or the loan terms do not meet PHA qualifications.

27. *Prohibition on ownership interest in second residence (§ 982.633(b)(7)).* This final rule clarifies that no family member may have a present ownership interest in a second residence while receiving homeownership assistance.

28. *Additional requirements for continuation of homeownership assistance (§ 982.633(b)(8)).* The final rule provides that the additional requirements for continuation of homeownership assistance established by the PHA may include a requirement for post-purchase homeownership counseling or for periodic unit inspections while the family is receiving homeownership assistance. With regards to post-purchase counseling, PHAs are encouraged to at least provide the family written briefing materials covering the topics in the PHA-required housing counseling program at the time of any refinancing of the initial debt, or the financing for improvement or repair of the home.

29. *Maximum term of homeownership assistance (§ 982.634).* The final rule provides for a mandatory term limit on homeownership assistance of 15 years if the initial mortgage incurred to finance purchase of the home has a term that is 20 years or longer. In all other cases, the maximum term of homeownership assistance is 10 years. The PHA may not establish shorter or longer maximum terms.

30. *Applicability of maximum term for homeownership assistance (§ 982.634).* The final rule clarifies that the maximum term for homeownership assistance applies to any member of the household who has an ownership interest in the unit during any time that homeownership payments are made, or is the spouse of any member of the household who has an ownership interest in the unit at the time homeownership payments are made.

As in the proposed rule, the final rule provides that the maximum term for homeownership assistance does not apply to an elderly family or a disabled family. The final rule clarifies that, in the case of an elderly family, this exception is only applied if the family qualifies as an elderly family at the commencement of homeownership assistance. In the case of a disabled family, this exception applies if at any time during receipt of homeownership assistance the family qualifies as a disabled family.

If, during the course of homeownership assistance, the family ceases to qualify as a disabled or elderly family, the maximum term becomes applicable from the date homeownership assistance commenced. However, such a family must be provided at least 6 months of homeownership assistance after the maximum term becomes applicable (provided the family is otherwise eligible to receive homeownership assistance in accordance with this part).

31. *Inclusion of accessibility modifications as homeownership expenses (§ 982.635(c)(2)(vii) and § 982.635(c)(3)(vii)).* The final rule clarifies that, if a member of the family is a person with disabilities, eligible homeownership expenses may include debt incurred to finance costs needed to make the home accessible for the family member, if the PHA determines that the allowance is needed as a reasonable accommodation.

32. *Inclusion of condominium or cooperative operating charges or maintenance fees as homeownership expenses (§ 982.635(c)(4)).* The final rule provides that, if the home is a cooperative or condominium unit, homeownership expenses may include cooperative or condominium operating charges or maintenance fees assessed by the condominium or cooperative homeowner association.

33. *Homeownership assistance payments to lender or family (§ 982.635(d)(2)).* The final rule clarifies that, if the PHA decides to make the homeownership assistance payments directly to the lender, and the assistance payment exceeds the amount due to the lender, the PHA must pay the excess amount directly to the family.

34. *Automatic termination of homeownership assistance (§ 982.635(e)).* The final rule clarifies that homeownership assistance for a family terminates automatically 180 calendar days after the last housing assistance payment on behalf of the family. However, a PHA has the discretion to grant relief from this requirement in those cases where automatic termination would result in extreme hardship for the family.

35. *Clarification of portability procedures (§ 982.636).* This final rule clarifies the portability procedures for Section 8 homeownership assistance. Generally, a family determined eligible for homeownership assistance by the initial PHA may purchase a unit outside of the initial PHA's jurisdiction, if the receiving PHA is administering a voucher homeownership program and is accepting new homeownership families. In general, the portability procedures for the Housing Choice Voucher program (described in §§ 982.353 and 982.355) apply to the homeownership option and the administrative responsibilities of the initial and receiving PHA are not altered except that some administrative functions (*e.g,* issuance of a voucher or execution of a tenancy addendum) do not apply to the homeownership option.

36. *Prohibition on provision of continued assistance to family with interest in prior home (§ 982.637(a)(2)).* The final rule provides that a PHA may not commence continued tenant-based assistance for occupancy of the new unit so long as any family member owns any title or other interest in the prior home.

37. *Denial or termination of homeownership assistance (§ 982.638).* For purposes of clarity, the final rule consolidates the provisions regarding the denial and termination of homeownership assistance in a new § 982.638.

38. *Continued assistance after mortgage defaults (§ 982.638(d)).* This final rule clarifies the regulatory provisions regarding continued assistance to a family that has defaulted on a mortgage obtained through the homeownership option. The final rule provides that the PHA must terminate voucher homeownership assistance for any member of a family that is dispossessed from the home pursuant to a judgement or order of foreclosure on any mortgage (whether FHA-insured or non-FHA) securing debt incurred to purchase the home, or any refinancing of such debt. However, the family may be eligible to receive continued voucher rental assistance. The PHA may consider mitigating circumstances in determining whether to provide a family with rental assistance after a mortgage default.

39. *Recapture of homeownership assistance (§ 982.640).* In response to public comment, the final rule provides for the recapture of a percentage of homeownership assistance provided to the family upon the sale or refinancing of the home. Sales proceeds that are used by the family to purchase a new home with Section 8 homeownership assistance are not subject to recapture. Further, a family may refinance to take advantage of lower interest rates, or better mortgage terms, without any recapture penalty. Only those proceeds realized upon refinancing that are retained by the family (for example during a ''cash-out'' of the refinanced debt) are subject to the new recapture provision.

The final rule requires that, upon purchase of the home, a family receiving homeownership assistance shall execute documentation as required by HUD, and consistent with State and local law, that secures the PHA's right to recapture the homeownership assistance. The lien securing the recapture of homeownership subsidy may be subordinated to a refinanced mortgage. The amount of homeownership assistance subject to recapture shall automatically be reduced over a 10 year period, beginning one year from the purchase date, in annual increments of 10 percent. At the end of the 10 year period, the amount of the homeownership assistance subject to recapture will be zero.

IV. Public Comments Received on the April 30, 1999 Proposed Rule

The public comment period on the April 30, 1999 proposed rule closed on June 29, 1999. HUD received 93 public comments. Comments were submitted by PHAs, including regional and State housing agencies; national organizations representing PHAs; legal services organizations; mortgage bankers; Fannie Mae and Freddie Mac; advocates for persons with disabilities; low-income housing advocates; and various other organizations and individuals. The following sections of this preamble present a summary of the significant

issues raised by the public commenters on the April 30, 1999 proposed rule, and HUD's responses to these comments.

Section V. of the preamble discusses general comments that did not address a specific regulatory section. Section VI. of the preamble discusses those comments that concerned a specific regulatory provision of the proposed rule.

V. Discussion of General Comments Not Regarding a Specific Regulatory Section

A. Support for Proposed Rule

Comment: Support for proposed rule. Several commenters expressed support for the proposed rule and the concept of the Section 8 homeownership option. One commenter wrote: ''In general, [our PHA] commends the job that HUD has done in this component of the immense regulatory undertaking required by the [Public Housing Reform Act].'' Another commenter wrote that its board ''unanimously endorsed the concept of the Section 8 homeownership program, and applauds HUD for taking this initiative.'' Still another commenter wrote: ''[We] applaud the proposed Section 8 Homeownership Program.''

HUD Response. HUD is appreciative of the comments in support of HUD's efforts in developing the proposed rule. HUD believes that the Section 8 homeownership option will provide local PHAs with greater flexibility in addressing the housing needs of their communities while creating homeownership opportunities for the low-income families the Section 8 tenant-based program is designed to serve.

B. General Concerns About the Proposed Rule

Comment: HUD should prohibit or limit the use of Section 8 rental assistance funds for homeownership. Several commenters were opposed to the concept of Section 8 homeownership. These commenters wrote that limited Section 8 resources should be used solely to assist families in renting decent, safe, and sanitary units. One of the commenters wrote that many communities currently offer other programs with Community Development Block Grant (CDBG), HOME, or state or local funding to assist prospective first-time homebuyers. Several of the commenters suggested that HUD should establish reasonable upper limits on the number or percentage of households that can use the homeownership option, in order to protect the availability of rental assistance for extremely low-income families. According to these commenters, the homeownership option is geared toward families with relatively higher incomes than the typical Section 8 rental program participant.

HUD response. Section 8(y) provides that a PHA, in its discretion, may make Section 8 homeownership assistance available to eligible families. HUD anticipates that PHAs will consider local circumstances (such as the availability of other local resources) when deciding whether or not to implement a homeownership program.

HUD does not believe it is necessary to establish upper limits on the number of families a PHA may allow to participate in the homeownership option in order to protect the interests of extremely low-income families. Since the same income targeting requirements apply to the rental and homeownership components of the Section 8 Housing Choice Voucher program, implementation of the homeownership option should not have a significant effect on the availability of Section 8 voucher assistance to extremely low-income applicants.

Comment: The lack of uniformity in program rules for PHAs will discourage lender participation and impede family choice and economic mobility. Several commenters wrote that the proposed rule grants too much discretion to PHAs to establish certain critical elements of the homeownership program. These areas include minimum income requirements, program eligibility requirements, financing requirements, and the duration of homeownership assistance. The commenters wrote that, as a result of the lack of uniform rules, there will be considerable disparity from one jurisdiction to another unless HUD imposes uniform rules. The commenters wrote that such disparities would discourage lender participation and prevent regional efforts to expand homeownership opportunities. Without broad lender participation, families would be deprived of the protections offered by a competitive marketplace and would be vulnerable to fraudulent real estate and financing practices.

HUD response. The final rule continues to provide PHAs with broad administrative flexibility over the homeownership option. Where HUD has determined that uniformity is appropriate (such as in the areas of minimum income, employment, and maximum term of assistance), this final rule establishes uniform Federal standards. However, HUD continues to believe that administrative flexibility is essential for the program to address local needs, adapt to local markets, and permit localized financing strategies in order to achieve success in individual communities. The approach of the final rule is consistent with two of the purposes of the Public Housing Reform Act: to deregulate PHAs, and to provide more flexible use of Federal assistance to PHAs (see section 505(b) of the Public Housing Reform Act).

While standardized requirements may facilitate participation by certain regional and national financing entities, and increase opportunities for sales of mortgages in the secondary market, HUD believes that PHA flexibility over certain features of the program will not preclude that result. For instance, a regional lending institution could establish its own requirements to participate in the section 8(y) program. PHAs could then choose to structure their programs accordingly in order to comply with and complement the lender's requirements for participation.

C. Comments Regarding Persons with Disabilities

Comment: Support for rule provisions regarding the elderly and persons with disabilities. A number of commenters commended HUD for the sensitivity shown in the proposed rule to persons with disabilities' real life situations, especially in the areas of income and employment. These commenters wrote that the proposed rule demonstrated that HUD is attuned to disability issues and that a conscious effort was made to recognize those barriers faced in accessible housing.

HUD response. HUD appreciates the comments supporting the proposed rule provisions concerning the elderly and persons with disabilities.

Comment: The rule should require the PHA or a local supportive service provider to annually review difficulties faced by persons with disabilities in maintaining their mortgage payments or homes. The commenter submitting this suggestion wrote that an annual review is necessary to ensure that: (1) homeowners with disabilities continue to be able to access the supportive services they choose; and (2) supportive service agencies and the PHA are aware of any problems the family may be having.

HUD Response: The final rule provides that PHAs may offer post-purchase counseling, and HUD encourages the use of such counseling to further lessen the risk of defaults. However, it would be inappropriate to limit post-purchase counseling to persons with disabilities, and HUD believes it would be inappropriate to presume that persons with disabilities require additional scrutiny because they

are more likely to default on their mortgages. Accordingly, HUD has not adopted the suggestion made by the commenter.

Comment: The rule should define what constitutes a ''reasonable accommodation'' for a person with disabilities. Several commenters wrote that the proposed rule would require a PHA to offer Section 8 homeownership assistance ''if needed as a reasonable accommodation for a family member who is a person with disabilities'' (64 FR 23488). These commenters suggested that the final rule should establish guidelines to determine when homeownership assistance is a ''reasonable accommodation.'' The commenters wrote that, without such guidance in the final rule, PHAs that choose not to provide a homeownership option may fail to provide the required ''reasonable accommodation'' to persons with disabilities.

Other commenters, however, wrote that PHAs should not be required to offer homeownership assistance as a reasonable accommodation. The commenters wrote that this obligation could be costly to a PHA that has not elected to offer the homeownership option and has not assembled the counseling and other resources needed to operate it.

HUD response. The provision of homeownership assistance as a reasonable accommodation is determined on a case-by-case basis by the PHA. The PHA will determine what is reasonable based on the specific circumstances and individual needs of the person with a disability. It is the sole responsibility of the PHA to determine whether it is reasonable to implement a homeownership program as a reasonable accommodation. For example, depending on the individual circumstances, the PHA may determine that it is a reasonable accommodation to provide homeownership assistance when the PHA has implemented a limited homeownership program and is currently assisting the maximum number of homeowners in the PHA program. On the other hand, the PHA may determine that it is not reasonable to provide homeownership assistance as a reasonable accommodation in cases where the PHA has otherwise opted not to implement a homeownership program.

Comment: All homeownership briefing materials should be accessible to persons with disabilities. Several commenters suggested that HUD should ensure that all homeownership programs and briefing materials are accessible to person with all types of disabilities.

HUD response. The Section 8 homeownership program is a ''special housing type'' under subpart M of the tenant-based Section 8 program regulations. Except when specifically modified by subpart M, requirements in the other subparts of the tenant-based regulations apply to the special housing types (including the homeownership program). Accordingly, as specified in § 982.301, the PHA, in briefing a family that includes any person with disabilities, must take appropriate steps to ensure effective communication in accordance with 24 CFR 8.6.

D. Comments Regarding the Role of Nonprofits

Comment: The final rule should encourage PHAs to contract with nonprofit organizations to administer the homeownership assistance. A number of commenters wrote that PHAs have had little experience in operating homeownership programs, whereas nonprofits have a solid-track record in this area. These commenters wrote that PHA partnerships with nonprofits may prove particularly helpful in preventing fraud and other abusive practices. In addition, the commenters wrote that nonprofits' knowledge of the market can help ensure that families are exposed to housing choices in a range of neighborhoods. The commenters wrote that there is much to be gained by requiring, or at least strongly encouraging, PHAs to partner with nonprofits in the design and operation of Section 8 homeownership programs.

HUD response. While the final rule does not require the PHA to partner with a nonprofit, the PHA may wish to consider subcontracting with nonprofits for administration of one or more of the responsibilities under the homeownership program, just as it may contract out other PHA functions in administering the Section 8 Housing Choice Voucher program. Alternatively, the PHA may wish to consult with nonprofit organizations with homeownership experience in designing the PHA's homeownership program. HUD encourages PHAs lacking in homeownership program experience to explore the possibility of working with experienced nonprofits through partnerships or contractual arrangements to design and administer a successful section 8(y) program. Regardless of the PHA approach to the delivery of PHA responsibilities, the PHA is always responsible for overall compliance with program requirements.

Comment: Where there is no PHA willing to implement the homeownership option in a particular area, HUD should permit other public agencies or private nonprofits to administer a Section 8 homeownership program. Several commenters wrote that this approach would expand homeownership opportunities for persons with disabilities, even in those cases where a PHA chooses not to provide the homeownership option or where there is no tenant-based program at all (perhaps an area where there is little or no rental housing, but an abundance of low-cost single-family homes).

HUD response. Section 8(o)(15) of the 1937 Act specifically provides that a PHA providing tenant-based assistance ''may at the option of the agency, provide assistance for homeownership'' and that a PHA ''may contract with a nonprofit organization to administer a homeownership program.'' The decision to offer homeownership assistance rests with the PHA and there is no additional or separate funding provided for homeownership assistance. A PHA that does not want to use existing staff to implement a homeownership program may consider subcontracting with a nonprofit organization to administer the homeownership program on behalf of the PHA, but is not required to do so.

E. Comments Regarding Income Targeting

Comment: The final rule should clarify whether Section 8 homeownership subsidies are subject to the same income targeting requirements as the Section 8 rental assistance program. A few commenters wrote that if the new income targeting requirements of the Public Housing Reform Act apply, the requirements will reduce the pool of families eligible for Section 8 homeownership assistance.

HUD response. The Section 8 homeownership program is a ''special housing type'' under subpart M of the tenant-based Section 8 program regulations. Except when specifically modified by subpart M, requirements in the other subparts of the tenant-based regulations apply to the special housing types (including the homeownership program). The income targeting requirements apply to the PHA's entire tenant-based Section 8 program, including the rental and any homeownership portion of the program.

HUD anticipates that most participants in the Section 8 homeownership program will be current program participants, not applicants. Since families continuing to receive assistance under the 1937 Act are not considered as new admissions, their income levels are not examined for compliance with income targeting requirements.

F. Comments Regarding the Relationship Between the Homeownership Option and the Family Self-Sufficiency (FSS) Program

Comment: Linking the FSS Program to Homeownership Option. One commenter expressed the opinion that it is very important to retain PHA discretion regarding whether to link the Section 8 homeownership program to FSS. Several commenters wrote that families should not be required to participate in the FSS program as a condition of receiving homeownership assistance.

HUD response. There is no federal requirement that families must participate in the FSS program as a condition of receiving homeownership assistance. There is, however, PHA administrative flexibility to link the FSS and homeownership programs. For example, the PHA may adopt local homeownership eligibility requirements such as participation in the FSS program. The PHA may opt to incorporate the homeownership goal in the family's FSS contract of participation so any FSS escrow could be advanced for purchase of a home or home maintenance/improvement purposes. HUD believes that PHA discretion over this issue is appropriate and in keeping with the intention to ensure there is sufficient PHA flexibility to address the local community's needs and objectives in the administrative policies of the program.

G. Considering Section 8 Assistance as Income for Purposes of Financing Purchase of Home

Comment: Section 8 assistance should not be considered income for purposes of financing the purchase of the home. Several commenters wrote that the proposed rule did not adequately consider the high cost of housing in certain metropolitan areas. The commenters wrote that the preamble to the proposed rule states that ''it is anticipated that mortgage lenders will consider the Section 8 assistance as a source of income when underwriting the loan'' (64 FR 23488, 23489). Instead, the commenters suggested that the final rule should require that the voucher housing assistance payment be deducted from the monthly housing expense. The commenters wrote that, due to the high cost of housing in certain metropolitan areas, the housing assistance payment will not raise income sufficiently to permit the family to qualify for a loan in an amount necessary to purchase a good quality home.

One of the commenters wrote that lenders should not consider Section 8 assistance as a source of income because payments are not earned income or entitlement income, are not guaranteed for more than 12 months, and may decrease with an increase in total family income or violation of Section 8 program requirements.

Another commenter recommended that the final rule prohibit discrimination based on source of income because lending institutions do not view government benefits as a reliable or stable source of income. Accordingly, these lenders will be unlikely to approve home loan applications from Section 8 recipients.

HUD response. Section 8(y) does not regulate the lending industry. Consequently, the final rule does not impose any requirement on lenders to treat the subsidy in a certain manner, nor does the rule prohibit discrimination by lenders based on source of income. Lenders will apply their underwriting criteria for financing of homes to be purchased under the Section 8 homeownership program. HUD notes that, to the extent applicable, lenders must comply with the Equal Credit Opportunity Act (15 U.S.C. 1601 *et seq.*) (referred to as ''ECOA'') and the implementing regulations issued by the Federal Reserve Board at 12 CFR part 202. ECOA prohibits lending discrimination, including discrimination based on receipt of public assistance.

H. Comments Regarding Mortgage Defaults

Comment: HUD should require that each PHA with a homeownership program develop a strategy to reduce foreclosure risk. Two commenters wrote that such a requirement would help minimize foreclosures among participating families.

HUD response. Although HUD has not adopted the suggestion, the final rule does provide that a family must attend and satisfactorily complete pre-assistance homeownership counseling before homeownership assistance may commence. In addition, HUD encourages PHAs to provide post-purchase counseling and otherwise develop local strategies to reduce mortgage foreclosures by families participating in the homeownership program.

I. Other General Comments

Comment: The final rule should explicitly permit PHAs to limit homeownership assistance to local needs. The preamble to the April 30, 1999 proposed rule provided that: The PHA may choose to make homeownership assistance freely available for any qualified applicant or participant, or to restrict homeownership assistance to families or purposes defined by the agency. (64 FR 23488)

One commenter wrote that the proposed regulatory text does not contain comparable language. The commenter wrote that a PHA should have the discretion to limit application of its Section 8 homeownership program, in whole or in part, to achieve local housing goals or priorities. Accordingly, the commenter suggested that the final rule contain regulatory text equivalent to the quoted preamble language.

HUD response. The final rule explicitly provides at § 982.626(b) that the PHA may limit homeownership assistance to families or purposes defined by the PHA.

Comment: HUD should explicitly authorize and encourage PHAs to join together to administer the homeownership option. Several commenters wrote that lenders are much more likely to participate in a regional program than in a program whose rules vary from PHA to PHA. The commenters wrote that a regional program would facilitate mobility and minimize portability concerns.

HUD response. PHAs currently have necessary flexibility to join in the regional administration of the homeownership option. Explicit authorization is not necessary for PHAs to jointly administer (or otherwise cooperate in the administration) of the Section 8 homeownership program.

Comment: PHAs should be required to provide homeownership option. A few commenters suggested that PHAs should be required to offer Section 8 homeownership assistance. The commenters wrote that HUD should exempt a PHA from offering homeownership assistance only if the PHA can document that implementing the homeownership option in its jurisdiction would not be feasible.

HUD response. The recommendation made by the commenters is inconsistent with the 1937 Act. Section 8(o)(15) of the 1937 Act specifically provides that a PHA providing tenant-based Section 8 assistance ''may at the option of the agency, provide assistance for homeownership.'' Accordingly, HUD has not adopted the suggestion made by the commenters.

Comment: HUD should isolate Section 8 homeownership loans from other FHA loans. One commenter wrote that loans under the Section 8 homeownership program will likely

have higher default ratios than other loans, and that lenders originating these loans would be penalized when their default numbers are higher than those of their peers who have not participated in the program. Specifically, the commenter wrote that lenders participating in the Section 8 homeownership program might unfairly lose their FHA approved lender status. Therefore, the commenter suggested that HUD's tracking systems should isolate loans issued under the Section 8 homeownership program from other FHA loans.

HUD response. Lenders will use normal FHA underwriting criteria for FHA-insured loans. As a result, HUD does not anticipate a higher than average default rate and HUD does not intend to track these loans separately.

J. General Questions About the Proposed Rule

Comment: Is a PHA an eligible seller under the homeownership program?

HUD response. There is no prohibition against a family purchasing a PHA-owned home under the Section 8 homeownership program. However, the PHA cannot steer families (or otherwise limit or restrict purchase options) to PHA-owned or controlled units.

Comment: Is a manufactured home eligible for purchase under the homeownership program?

HUD response. A manufactured home and the real property upon which the manufactured home sits are eligible for purchase under the homeownership program.

Comment: At annual reexaminations of family income subsequent to home purchase, will the owned home be counted as an asset? One commenter wrote that this could become a serious problem if there is rapid appreciation of the value of the home.

HUD response. In response to this comment, HUD has revised the definition of ''net family assets'' found in 24 CFR 5.603(d). The revised definition excludes the value of a home currently being purchased with Section 8 homeownership assistance. This exclusion is limited to the first 10 years after the purchase date of the home.

Comment: Is the initial 40 percent maximum rent burden requirement under the Housing Choice Voucher program applicable to the homeownership option? The commenter wrote that this provision, if applied to the homeownership program, would severely limit housing choice.

HUD response. The 40 percent initial rent burden cap does not apply to families who will participate in the Section 8 homeownership program since homeownership families do not pay rent.

Comment: If the lender is relying on the Section 8 assistance to secure the mortgage, is the family, the PHA, or HUD is responsible for payment of the note?

HUD response. Neither the PHA nor HUD is guarantor of mortgage note for a home being purchased under the Section 8 program. The terms of the loan note will determine who is responsible for payment (usually the family) of the loan.

VI. Discussion of Comments Regarding a Specific Regulatory Section

For the convenience of readers, the discussion that follows is organized by the regulatory section of the proposed rule it pertains to (e.g., § 982.625, § 982.633, etc.). As noted, HUD has made several organizational changes at the final rule stage. Accordingly, the proposed regulatory section headings do not always correspond to those of this final rule.

A. Definitions (proposed § 982.4)

Comment: Definition of ''Public Assistance'' is too broad. Several commenters wrote that the proposed definition of ''public assistance'' is overly broad and subject to misinterpretation. The commenters suggested that the definition should be narrowed to specifically identify only those welfare programs that may not be counted in determining minimum income. Other commenters wrote that the definition should exclude food stamps, unemployment insurance and permanent disability payments.

HUD response. The final rule addresses the concerns raised by the commenters regarding the clarity of the definition of ''public assistance.'' Specifically, HUD has removed the definition of the term ''public assistance'' and adopted, in its place, the definition of the term ''welfare assistance'' located in 24 CFR 5.603. The definition of ''welfare assistance'' is well-established and understood by PHAs. Further, the use of the term ''welfare assistance'' in this final rule will help to ensure the consistent use of defined terms throughout HUD's regulations.

Comment: The definition of ''cooperative'' should not be limited to ''housing owned by a nonprofit corporation or association.'' One commenter wrote that many housing cooperatives are incorporated under their home state's business corporation act. The commenter suggested that by dropping the word ''nonprofit,'' the definition would better reflect the reality of diverse legal practices among states. Another commenter wrote that the proposed definition is unnecessarily intrusive, imposes unnecessary administrative functions, and unduly hinders the use of cooperative housing.

HUD response. Consistent with the recommendation, the regulatory definition of ''cooperative'' in the final rule is no longer limited to housing owned by a nonprofit entity.

B. Lease-purchase arrangements (proposed §§ 982.305 and 982.317)

Comment: HUD should develop a model lease-purchase agreement to prevent fraud by seller. The commenter wrote that a standard lease-purchase agreement would prevent seller fraud.

HUD response. HUD does not intend to provide or require the use of a standard HUD-prescribed lease-purchase agreement for the Housing Choice Voucher program. HUD believes broad flexibility is needed in this area to reflect the wide range of acceptable real estate market practices that differ among localities.

Comment: Applicability of homeownership requirements upon entering lease-purchase agreement. Two commenters suggested that a lease-purchase family should be required to comply with all homeownership requirements before purchase of the home. Another commenter wrote that PHAs should be provided with the option of requiring compliance with the homeownership requirements at the start of the lease-purchase arrangement.

One commenter wrote that Section 8 families opting for homeownership through a lease-purchase arrangement should be required to satisfy at least half the continuous employment and half the required counseling requirements at the time they enter the lease-purchase program. The commenter wrote that, since lease-purchase families typically have credit-history problems to clear up over time, it would be onerous to impose all of the homeownership requirements on the family at the time of their entrance into the program.

Other commenters wrote that a lease-purchase family should be subject to the independent professional home inspection requirements of the homeownership program before entering into a lease-purchase arrangement. These commenters wrote that it would be devastating to a lease-purchase family to reach the purchase option stage only to discover that the purchase is jeopardized due to a property defect.

Several commenters suggested that the counseling requirement should be

applicable before entering into the lease-purchase arrangement. These commenters wrote that families should have an idea of what the responsibilities of homeownership are before entering into a lease-purchase arrangement.

One commenter wrote that HUD should continue to allow a family to enter into a lease-purchase arrangement without being subject to the homeownership program requirements.

HUD response. HUD has not changed the requirements specified in the proposed rule for lease-purchase arrangements. The final rule does not require families with lease-purchase arrangements under the Section 8 tenant-based rental program to comply with any of the Section 8 homeownership program requirements. However, HUD believes it is in the best interest of these families for the PHA to brief the family on the homeownership requirements if they expect to receive Section 8 homeownership assistance to complete the purchase transaction. The PHA may refer families participating in lease-purchase arrangements to HUD homeownership counseling agencies. There is generally little or no cost to the participant for this HUD funded counseling.

C. Cooperative Housing (proposed § 982.619).

Comment: Final rule should clarify that the occupancy agreement controls not only the allocation of maintenance responsibility between the cooperative member and the cooperative, but also the rules to which the Section 8 assisted members are subject. Several commenters wrote that consideration and adoption of the rules governing co-ownership is the focus of much democratic process in virtually every housing cooperative. The commenters wrote that few cooperatives would be willing to accept the existence of a differently-privileged class of Section 8-assisted members in their midst.

HUD response. HUD disagrees that the suggested clarification is necessary. The rule does not change the legal relationship between the cooperative and cooperative member.

Comment: Final rule should clarify that, where rental assistance is used in a cooperative setting, Section 8 assistance may be used for the acquisition costs of cooperative memberships or shares. The commenter wrote that this is especially critical in limited-equity cooperatives, which is the type of cooperative in which most Section 8 rental assistance is used. In limited-equity cooperatives, the share or membership prices are strictly limited to provide ongoing affordability of acquisition to low-income families. Section 8 rental assistance is currently used in these settings to pay for the membership acquisition over time.

HUD response. This comment, which appears to relate only to Section 8 rental assistance, is outside the scope of this rulemaking, which implements the ''homeownership option'' authorized by section 8(y) of the 1937 Act. HUD notes, however, that the final rule provides that the costs of purchasing a cooperative unit may be included as a ''homeownership expense'' for purposes of determining the amount of monthly homeownership assistance payment (see § 982.635(c) of this final rule).

D. Homeownership Option: General (proposed § 982.625)

Comment: Newly constructed homes or units under construction should be eligible for purchase under the homeownership option. Several commenters wrote that in some areas the only affordable housing is new housing being constructed by nonprofits, and that new construction provides greater assurances to low-income families that major repairs will not be necessary. The commenters wrote that the prohibition against new construction would make it more difficult for persons with disabilities to find accessible homes. Other commenters wrote that new construction normally occurs in areas of job growth. The prohibition would therefore prevent families from moving to such an area in search of employment opportunities.

HUD response. In response to these comments, HUD has revised proposed § 982.625, which described the ''existing home'' requirement. Section 982.628(a)(2) of this final rule provides that a home may be purchased under the homeownership option if, at the time the PHA determines that the family is eligible for Section 8 homeownership assistance, the home is either under construction or already existing. However, before commencing homeownership assistance for the family, the PHA must determine that the home satisfies all of the applicable requirements described in § 982.628 of this final rule (for example, the home must have been inspected by a PHA inspector and by an independent inspector designated by the family; and the home must meet the HUD Housing Quality Standards (HQS)).

Comment: The homeownership option should be available only to current recipients of Section 8 rental assistance who have successfully complied with all rental program requirements for at least one year. One commenter suggested that homeownership assistance should not be made available at initial admission. According to the commenter, this will facilitate proper counseling and a considered housing search without imposing artificial deadlines.

HUD response. HUD has not adopted this suggestion. HUD notes, however, that PHAs may choose to impose this condition as an additional requirement for eligibility.

Comment: Possible exceptions to the first-time homebuyer requirement. Several commenters made suggestions on possible exceptions to the first-time homebuyer requirement. Other commenters, however, wrote that HUD should retain the first-time homeownership requirements as set forth in the proposed rule, since the definition conforms to the industry standard. Among the suggested exceptions, were exceptions for:

- A divorced spouse who does not retain homeownership interest;
- Persons with disabilities who lost a previous home as a result of becoming disabled;
- Any otherwise eligible person with a disability;
- Victims of domestic violence;
- Current manufactured homeowners;
- Owners of substandard housing; and
- Single parents.

Another commenter suggested that the first-time homebuyer requirement should only apply to the mortgagor, not to the entire family. The commenter wrote that, otherwise, other family members would be unfairly prevented from subsequently enjoying Section 8 homeownership benefits.

Two commenters wrote that homeownership assistance should not be restricted to first-time homebuyers. Several commenters wrote that PHAs should be provided with the option of establishing additional exceptions to the first-time homebuyer requirement.

HUD response. HUD has carefully considered all of the suggested exemptions to the first-time homebuyer requirement and is sympathetic to the circumstances of families in many of the suggested categories. However, HUD has decided not to attempt to specify, by regulation, the many possible situations that may merit an exception to the first-time homebuyer requirement.

However, HUD has revised the definition of ''first-time homeowner'' at § 982.4 to clarify the eligibility of single parents and displaced homemakers, as those terms are defined in section 956 of the Cranston-Gonzalez National Affordable Housing Act (codified at 42 U.S.C. 12713). Section 956 provides that no displaced homemaker or single

parent ''may be denied eligibility under any Federal program to assist first time homebuyers'' because of previous ownership of a home by or with a spouse. Accordingly, this final rule provides that such individuals are ''first-time homeowners'' for purposes of the homeownership option and are, therefore, eligible to receive Section 8 homeownership assistance.

In addition, HUD has further revised this definition to clarify that any family who has owned any residential property during the preceding three years (regardless of whether it is the family's principal dwelling unit or not) does not qualify as a first-time homeowner.

Comment: The PHA should not be able to ''pass over'' a family on its waiting list in order to provide another family homeownership assistance. One commenter suggested that such a practice would be unfair to families on the waiting list. Another commenter suggested that HUD should explicitly forbid separate waiting lists for rental and homeownership assistance.

HUD response. HUD's regulations at 24 CFR part 982, subpart M, provide that a PHA may not set aside program funding for special housing types or for a specific special housing type. The PHA may not require an applicant to use the Housing Choice Voucher program assistance for a particular special housing type. Consequently, a PHA may not maintain separate waiting lists for special housing types or provide a selection preference based on a family's willingness to use the housing choice voucher for a particular special housing type.

Instead, if the PHA opts to offer Section 8 homeownership assistance, the PHA may offer families (both current participants and applicants who have been issued housing choice vouchers) that meet the initial eligibility criteria (including any additional requirements established by the PHA) the opportunity to use their Section 8 assistance to purchase a home. If the PHA has established limits on the number of vouchers that may be used for homeownership, the PHA simply suspends offering Section 8 homeownership assistance at such time that the number of families receiving homeownership assistance, in combination with the number currently in the pre-assistance phase of the program, reaches the PHA limit.

E. Initial requirements (Proposed § 982.626)

Comment: The rule should allow for homeownership assistance to be used by a family to purchase a two- and three-family home. The commenter wrote that, in certain areas, much of the affordable housing stock consists of two- and three-family homes, and the rental income would help the family meet its share of the homeownership expenses.

HUD response. Homeownership assistance is provided to assist a family with the monthly homeownership expenses of its residence. Homeownership assistance may not be used to assist the family with the monthly expenses for investment or rental property. The family may not use Section 8 homeownership assistance to purchase two- or three-family homes. Accordingly, § 982.628 of this final rule clarifies that a home purchased with homeownership assistance must either be a one unit property or a single dwelling unit in a cooperative or condominium.

Comment: PHAs should not be allowed to establish local eligibility requirements for the homeownership option that are more restrictive than those for Section 8 rental assistance. Several commenters wrote that stricter requirements have the potential to discriminate or discourage users with disabilities from using the homeownership option.

HUD response. HUD has not adopted this suggestion. Section 8(y) specifically requires homeownership eligibility criteria that are not applicable to the Section 8 rental assistance program. In addition, HUD believes it is appropriate for PHAs to have broad administrative authority to target homeownership assistance for specific purposes. Since the PHA has the option whether or not to offer Section 8 homeownership assistance, HUD believes retaining PHA administrative flexibility over this area is important to encourage wider implementation of the homeownership option.

Comment: The prohibition against providing homeownership assistance if the seller is debarred, suspended, or subject to a limited denial of participation imposes a hardship on the purchaser. The commenter wrote that after the purchase agreement is signed, the purchaser is contractually obligated to buy the home according to the terms the parties agreed to. Failure to complete the sale will result in loss of downpayment and could result in the purchaser being sued for failure to perform. An alternative would be to have the PHA conduct a review of the seller before execution of the purchase agreement.

HUD response. PHAs are encouraged to regularly review the list of individuals and entities that are debarred, suspended or subject to a limited denial of participation in HUD programs. In response to this comment, the final rule provides at § 982.631 that the contract of sale must contain a seller certification that the seller is not debarred, suspended, or subject to a limited denial of participation under 24 CFR part 24.

F. How to Qualify for Homeownership Assistance (Proposed § 982.627)

Comment: The relaxed regulatory requirements for the elderly and persons with disabilities will limit homeownership assistance to these individuals. One commenter wrote that lenders will be wary of the relaxed employment/income requirements established by the proposed rule for the elderly and persons with disabilities. The commenter wrote that lenders, concerned for their risk in underwriting a loan without the usual level of work history, will be less likely to approve home loans for elderly and disabled families.

HUD response.

HUD has not revised the rule in response to this comment. The relaxed eligibility requirements for elderly and disabled families are used by the PHA to determine if the family is eligible for homeownership assistance. The rule does not impose relaxed or exception standards for any family with respect to their ability to obtain financing from a lender.

Lenders will determine the creditworthiness of each borrower on a case-by-case basis using their own requirements and standards.

G. Minimum Income Requirements (proposed § 982.627(b)).

Comment: The minimum income requirements should be eliminated. Several commenters wrote that, since lenders will evaluate a family's resources as part of their mortgage application review, HUD should rely on them to screen out families who do not have sufficient resources to make payments on a mortgage loan, rather than permitting PHAs to establish a minimum income threshold.

HUD response. HUD has not adopted this suggestion. Section 8(y) explicitly establishes a minimum income requirement for participation in the Section 8 homeownership program.

Comment: HUD should establish uniform minimum income requirements.

Several commenters wrote that a national standard creates certainty, making it possible for national, regional, or statewide entities (lenders, advocates, intermediaries, nonprofits, etc.) to develop and administer activities in support of the program.

Other commenters wrote that the final rule should restrict the PHA from establishing minimum income requirements that will prevent persons on fixed incomes from receiving homeownership assistance, since elderly and persons with disabilities are often on low, fixed incomes. The commenters recommended that any minimum income requirements established by the PHA should not be so high that they exclude these individuals from homeownership assistance.

HUD response. HUD agrees that the regulation should establish a national standard for the minimum income requirements. As suggested by several of the commenters, HUD has decided to establish a national minimum income requirement that is equal to 2,000 hours of annual full-time work under the Federal minimum wage. A PHA may not establish a minimum income requirement in addition to the minimum income standard established by this final rule. HUD believes that this standard is administratively straight-forward, and addresses the statutory income requirement without arbitrarily eliminating working families that are making no more than the minimum wage.

Comment: PHAs should be permitted to make reasonable exceptions to the minimum income requirement if they determine that the applicant household has a high probability of being a successful owner. One commenter wrote that the minimum income requirements do not address one of the factors in mortgagor credit review—a household's total monthly fixed payment obligation. The commenter wrote that a household below the minimum requirement may have an exemplary credit history and no additional debt obligations. According to the commenter, such a household would be a better candidate for homeownership than a household with income above the minimum.

HUD response. HUD has not adopted this suggestion. The minimum income requirement represents the bare minimum income threshold the family must meet to be eligible for homeownership assistance, and does not automatically indicate the family would be a successful candidate for homeownership. Instead of making exceptions to the minimum income requirement for families that otherwise appear to have a high probability of being a successful homeowner, the PHA could work with the family on increasing family income through the FSS program or other self-sufficiency efforts.

Comment: Requiring the ''head of household or spouse'' to meet minimum income requirement fails to acknowledge the varied structure of some families, and has a disparate impact on single-headed households, domestic partners, and households that have related but unmarried adult members. Several commenters wrote that the minimum income requirements fail to account for the wide variety of families receiving Section 8 assistance. For example, it is possible for the head of household to have no earned income but have a domestic partner, adult child, or other adult family member that works.

HUD response. The purpose of the minimum income requirement is to ensure that the family has adequate resources to meet the additional costs associated with homeownership. The proposed rule tied the minimum income to the head of household and spouse in order to ensure that those family members who actually owned the home met the income requirement, as opposed to other family members that might shortly leave the household following the purchase (thereby increasing the risk of defaults). However, HUD agrees that this type of restriction does not sufficiently take the variety of family structures into account. Therefore, the final rule provides that the adult family members *who will own the home at commencement of homeownership assistance* must have annual income (gross income) that is not less than the minimum income requirement, as opposed to only the head and spouse.

Comment: Disabled and elderly families should be exempt from minimum income requirements. One commenter wrote that although the rule permits public assistance payments to be considered in determining whether an elderly or disabled family meets the minimum income requirements, disabled or elderly families would still have difficulty in meeting the minimum income threshold. The commenter suggested that elderly and disabled families should be exempt from the minimum income requirements, because the goal of rewarding work does not apply to these households.

HUD response. Section 8(y) does not provide for an exemption from the minimum income requirement for elderly or disabled families, other than the source of income used to determine if the family meets the requirement. The purpose of the minimum income requirement is to ensure that the family has sufficient income available to absorb the additional expenses associated with homeownership, not to ensure that the family meets the employment requirement.

H. Family Employment (proposed § 982.627(c))

Comment: The employment requirement should be eliminated. Several commenters recommended elimination of this requirement. The commenter wrote that HUD should rely on lenders to determine what is an acceptable employment history, rather than establishing minimum employment requirements or permitting PHAs to establish such requirements. Other commenters wrote that, since a minimum income requirement already exists, the employment requirement is redundant. The commenters suggested that, in the place of an employment requirement, HUD require a family to show proof that it earned the minimum income amount during the past year.

HUD response. The employment requirement is statutory and the requirement is essential to the purpose of rewarding work and assisting families in making the transition to economic self-sufficiency. However, the final rule, in accordance with the law, provides exceptions from the employment requirement for disabled and elderly families.

Comment: PHAs need flexibility in determining whether the family has fulfilled the ''continuous'' employment requirement. Several commenters wrote that the final rule should focus on whether prospective participants have maintained a steady income, not on whether they have been continuously employed. The commenters wrote that in some parts of the country there are seasonal industries that result in annual full-time income being acquired during only part of the year. Many persons, such as construction workers, nurses, taxi drivers, waitresses and hair dressers, may have multiple employers in the same year. The commenters recommended that the final rule grant PHAs flexibility in interpreting the ''continuous'' employment requirement.

HUD response. HUD agrees that the employment requirement should allow for small breaks in service to be taken into consideration. The final rule provides that the PHA has discretion to determine whether (and to what extent) an interruption is considered permissible. The final rule also clarifies that the PHA may count successive employment during the year and consider self-employment in a business.

Comment: Requiring the ''head of household or spouse'' to meet employment requirement fails to acknowledge the varied structure of some families. Several commenters wrote that requiring the head of household or spouse to meet the

employment requirements will disqualify many non-traditional families. In some extended families the head of household may be unemployed, but there may be an adult child who is employed and providing the income upon which the family could qualify for financing. One commenter suggested that the final rule should simply require that an adult member of the household be gainfully employed.

HUD response. HUD agrees with the commenters and the final rule provides that any of the adult family members who will own the home at commencement of homeownership assistance may fulfill the employment requirement.

Comment: The required term of employment should be lengthened. One commenter suggested that HUD should impose a two year employment term. The commenter recommended that the final rule should require either: (1) two years employment with the same employer; or (2) two years employment in the same line of work. The commenter wrote that this is the minimum required by mortgage underwriters. Other commenters suggested that the employment term should be at least three years. Another commenter wrote that the head of household or spouse should be required to be employed for as long as the family is receiving homeownership assistance, with limited periods of unemployment due to circumstances beyond the control of the family taken into consideration.

HUD response. The final rule does not extend the minimum employment term. HUD believes one year of substantially continuous employment is an acceptable minimum threshold and a realistic gauge of the likelihood of continued employment in the future. At the request of several public commenters, this final rule establishes a uniform national employment requirement. For purposes of uniformity, the final rule defines ''full-time employment'' to mean not less than an average of 30 hours per week. Further, the final rule adds a new § 982.627(d)(4), which provides that a PHA may not establish an employment requirement in addition to the employment standard established by the final rule. However, the lender will apply its own underwriting criteria, which may include an employment requirement that is more stringent than the standard adopted by the final rule.

I. Ineligibility of Family if Head or Spouse Previously Defaulted on a Mortgage When Receiving Homeownership Assistance (proposed § 982.627(d))

Comment: Prohibition against mortgage defaults is unnecessarily restrictive. Several commenters wrote that the requirement is unnecessarily restrictive. These commenters wrote that this is a matter best left to the discretion of the loan underwriter, who will consider the default in determining whether to approve the mortgage.

Another commenter suggested that a family who defaulted on a previous mortgage due to the death of a family member, or other circumstances beyond the family's control, should not be prohibited from receiving future homeownership assistance. The commenter suggested that the final rule should permit the PHA to determine on a case-by-case basis whether the default was beyond the family's control.

HUD response. The prohibition on participation by a family that previously defaulted on a mortgage while receiving section 8(y) assistance is a statutory requirement. Accordingly, HUD has not adopted the changes suggested by the commenters.

J. Additional PHA Requirements for Family Search and Purchase (proposed § 982.628)

Comment: Delays in provision of assistance may limit effectiveness of program. One commenter wrote that the longer, more unpredictable time frame between the time the PHA determines a family is eligible for homeownership assistance and the time that assistance actually commences would affect lease up rates and PHA financial management. The commenter wrote that this unpredictability may cause PHAs to offer homeownership assistance only to existing participants, rather than allowing new clients to participate.

HUD response. HUD agrees with the comment that permitting applicants to participate in the homeownership option will present PHAs with several significant challenges (such as defining a realistic search term for a first-time homebuyer without creating adverse impact on utilization rates and administrative fees) that do not surface if the PHA limits the option to current rental participants. For this reason, HUD anticipates that most participants in the Section 8 homeownership program will be families currently participating in the tenant-based rental program. The time required for a current participant to locate and purchase a home will have a minimal impact on the PHA's lease-up rate or financial management activities since the family may continue to receive rental assistance in their rental unit during the search and settlement process. The decision to extend the homeownership option to applicants, participants, or both applicants and participants rests with the PHA.

Comment: A family should be allowed more than two months to locate a home. Several commenters wrote that finding a home can be a lengthy process and requires more than two months. Although there was no consensus on the amount of time that should be provided, all of the commenters advocated that the final rule establish a greater length of time for finding a home. Suggestions included a minimum of four months, six months, and a range of six to nine months. A number of commenters wrote that due to the difficulty of finding a home that is both affordable and accessible, the final rule should ensure that persons with disabilities are provided with ample time to find a home to purchase.

HUD response. Neither the April 30, 1999 proposal nor this final rule place a two month limitation on the family's search for a home. Section 982.303 (term of voucher) is not applicable to the homeownership option (see § 982.641(b) of this final rule). HUD has not adopted the suggestions to establish a minimum term for family search and purchase. HUD believes this decision is properly left to the administrative discretion of the PHA, as the housing market will vary from community to community. However, in establishing such time limits, the PHA should ensure that a family who has executed a sales contract is provided reasonable time to close on the purchase of the home.

Comment: The final rule should explicitly provide that if a family is unable to locate a home within the time limits, the PHA should be required to issue a rental voucher or put the family at the top of the waiting list. One commenter made this suggestion.

HUD response. HUD has not adopted this comment. HUD does not wish to impose this type of requirement on PHAs.

Comment: The PHA should provide a letter to the lender verifying the applicant's family income, payment standard assistance, and any other financial help that would be offered to the family. Two commenters wrote that this type of documentation would enable the family to show prospective sellers, realtors, etc. that the family is in fact empowered to make the acquisition of a home. The commenters also wrote that this would assist the lender to pre-qualify the family accurately.

HUD Response. Although HUD is not requiring PHAs to provide such a letter to lenders in the final rule, PHAs may opt to provide prospective lenders or realtors with information concerning the family's participation in the Section 8 homeownership program, the applicable payment standard, and how the monthly subsidy will be calculated under the housing choice voucher program. However, HUD would caution the PHA not to provide income information on an individual family to any third party. The family must disclose income to the lender through the mortgage application process, and the verification of family income for underwriting purposes is the responsibility of the lender, not the PHA.

K. Homeownership Counseling (proposed § 982.629)

Comment: HUD should provide funding for homeownership counseling services. Several commenters recommended that HUD provide additional funding for homeownership counseling. One commenter suggested that HUD should make the additional funds available through a demonstration program or competition. Other commenters wrote that HUD should provide the necessary funding by either an increase in the ongoing administrative fee or by making provisions for approving release of the hard-to-house fee (currently available for assisting large families to lease a unit).

HUD Response. HUD has not adopted these recommendations. There are no additional appropriations made available for this purpose. Furthermore, PHAs can partner with HUD-funded homeownership counseling agencies to provide the necessary counseling. Since these agencies provide homeownership counseling services at little or no charge, the cost incurred by the PHA would be nominal. A list of the HUD-approved homeownership counseling agencies is available from the HUD Housing Counseling Clearinghouse website (http://www.hudhcc.org/agencies/agencies.html).

Comment: Charges to the family for counseling should be nominal. One commenter made this recommendation.

HUD response. Family completion of the pre-assistance homeownership counseling program is mandatory in order for homeownership assistance to commence on behalf of the family. Since the PHA cannot charge a family any type of fee to receive Section 8 assistance, the PHA may not charge a family a fee or otherwise pass on any of the cost of the counseling to the family.

Comment: Paragraph (b) of this section would be more accurate if it read ''The PHA-required pre-assistance counseling program. . . .'' One commenter wrote that the addition of the word ''required'' would clarify that the PHA itself is not obligated to provide the counseling.

HUD response. HUD agrees with the commenter, and has incorporated the suggested revision in the final rule.

Comment: The final rule should allow as much flexibility as possible to PHAs in the development of counseling programs. One commenter wrote that several of the mandatory counseling requirements may be inappropriate for certain types of PHA homeownership programs. The commenter urged that the final rule provide greater flexibility regarding the crafting of homeownership counseling programs.

HUD response. The final rule clarifies that the PHA-required counseling program should ''generally'' cover the topics listed in § 982.630. The final rule also provides that the PHA may adapt the housing counseling topics to local circumstances and the needs of individual families. Further, the final rule provides that, if the PHA is not using a HUD-approved housing counseling agency to provide the counseling for families participating in the homeownership option, the PHA should ensure that its counseling program is consistent with the homeownership counseling provided under HUD's Housing Counseling program.

Comment: Counseling programs should include information on fair housing and fair housing lending practices, as well as referrals to local fair housing enforcement agencies. One commenter made this suggestion.

HUD response. HUD agrees with the commenter, and the suggested revision has been incorporated in the final rule.

L. Home Inspections and Contract of Sale (proposed § 982.630)

Comment: Dual inspection requirements. A number of commenters objected to the proposed dual HQS/independent home inspection requirements. Several commenters wrote that two inspections would be duplicative and add unnecessary expense and time to the homebuying process. The commenters offered various alternatives to the dual inspection requirement. Several commenters suggested that only the independent inspection be required; others recommended that the initial HQS inspection be retained and the requirement for third-party inspection be removed. One commenter suggested that PHAs be granted the discretion to establish criteria for one uniform inspection. Another commenter recommended that the scope of the HQS inspection be expanded to include the desired features of an independent professional home inspection.

Other commenters supported the dual inspection requirement contained in the proposed rule. These commenters wrote that an independent home inspection was useful to identify potential problems that were not immediate deficiencies, but that an HQS inspection is also important to identify basic health and safety issues. One commenter wrote that the HQS inspection was also useful because it limited the possible financial burden on the family by identifying significant HQS deficiencies and eliminating the need for the family to pay for a subsequent independent inspection.

HUD response. After carefully considering the comments, HUD has not changed the requirement that the unit must pass an initial HQS inspection conducted by the PHA and also be subject to an independent professional home inspection. Section 8(y) removes the requirement that the PHA conduct annual HQS inspections, but does not eliminate the requirement that the unit initially meet HQS before assistance payments may commence. The statute specifically requires that the contract of sale provide for a pre-purchase inspection by an independent professional, which is clearly separate and distinct from the statutory HQS inspection.

The purposes of these inspections are also separate and distinct. The HQS inspection determines if the current physical condition of the unit is decent, safe, and sanitary, and is therefore eligible to be assisted under the Section 8 program. It is the sole responsibility of the PHA to determine whether a potential unit meets the HQS requirements of the program.

The HQS inspection is not designed to assess the life span of major components, building systems, appliances and other structural components in order to identify potential problems for the future, such as the need to replace an aging heating system or roof in the next several years. Clearly, such information is important for a potential homebuyer to take into consideration. The requirement for an inspection arranged by the buyer and satisfactory to the buyer is a typical contingency clause in contracts of sale and is consistent with private real estate practice.

HUD does not believe it is advisable to combine the distinct purposes of each

inspection into a single inspection. Combining the inspections compromises the independent standing of the professional inspector, who is selected by and paid by the potential buyer, and the separate programmatic role and responsibility of the PHA HQS inspector. HUD also agrees that the initial HQS inspection serves to ensure the family does not enter into a contract of sale or otherwise expend family resources for the independent inspection for units that are ineligible for Section 8 assistance.

Comment: The final rule should provide PHAs the discretion to modify the inspection requirements for new homes. Several commenters wrote that newly constructed homes often come with builder/contractor warranties and that new homes have to pass a series of inspections by local authorities in order to receive a final certificate of occupancy. The commenters recommended that the final rule permit PHAs to establish more relaxed inspection standards for newly constructed homes.

HUD response. HUD has not provided PHAs with the discretion to relax or modify the inspection requirements for newly constructed homes. HUD does not believe that the inspection requirement will prove problematic for new homes. The unit must initially meet the HQS and there is no automatic guarantee against poor construction or other types of problems, regardless of the date of completion of a particular unit.

Comment: HQS inspections should be performed on a regular basis throughout the term of assistance. One commenter wrote that HQS inspections should be required annually during the term of homeownership assistance. Another commenter suggested that HQS inspections should be performed at least once every two years at minimum. One commenter wrote that the PHA, or local supportive service provider, should be given the option of performing annual HQS inspections.

HUD response. The statute explicitly provides that the annual HQS inspection is not required for section 8(y) units. While the final rule does not require the PHA to conduct subsequent inspections of the unit, the final rule clarifies that the additional requirements for continuation of homeownership assistance established by the PHA may include additional unit inspections while the family is receiving homeownership assistance (see § 982.633(b)(8) of this final rule).

Comment: PHAs should be permitted to pay for the independent professional home inspection. Several commenters wrote that, given the expense involved in contracting with a home inspector, PHAs should be provided the option of paying for the independent home inspection.

HUD response. The independent home inspection is supposed to be independent of, not only the seller, but also the PHA. The HQS inspection, conducted prior to the time the family enters into a contract of sale and contracts for the independent inspection, and the pre-assistance counseling program should reduce the likelihood of the family having to incur the cost of the inspection for numerous units.

Comment: The independent inspector should be allowed to be an employee or contractor of the PHA. One commenter wrote that some PHAs contract with private nonprofit agencies that provide a variety of housing related services. According to the commenter, these agencies have rehabilitation programs and inspectors that are completely separate from the Section 8 program. The commenter wrote that PHAs should not lose these agencies as a resource for independent inspections.

HUD response. HUD has not adopted this recommendation. The pre-purchase inspection is supposed to be conducted by a professional independent of the PHA. The purpose of the requirement is to provide the potential buyer with an impartial third-party assessment of the physical condition of the property's systems and components. The final rule explicitly provides that the independent inspector may not be a PHA employee or contractor, or other person under control of the PHA.

M. Financing Purchase of Home; Affordability of Purchase (proposed § 982.631)

Comment: PHA administrative authority to establish financing requirements. Several commenters wrote that the PHA is not acting as the lender, nor has an ownership interest in the property, and should not determine acceptable types of financing or establish payment requirements. As an alternative, one of the commenters suggested that HUD should allow PHAs to define in their PHA Plans questionable financing situations (such as balloon payment mortgages) that would trigger a PHA review to determine the reasonableness of the financing arrangement.

Several other commenters wrote that variable interest rates have the potential to negatively impact a first-time homebuyer's success if the mortgage balloons while the family's income remains stagnant. These commenters urged that the final rule establish an absolute prohibition against balloon payments.

HUD response. After carefully considering the comments submitted on this issue, HUD has decided that it is appropriate to retain PHA administrative discretion to establish requirements regarding the terms of the financing. The PHA is in the best position to determine what is workable in its local community, and what level of risk related to variable interest rate mortgages and balloon payments is acceptable for the PHA's homeownership program. HUD believes that the flexibility granted to PHAs by the final rule will help to ensure responsible financial oversight of the homeownership program and that homeowners are provided with necessary protections. In addition, HUD believes that allowing the PHA to prohibit questionable types of financing will increase the number of PHAs willing to offer the homeownership option.

While HUD believes that PHAs should have the discretion to determine what financing requirements are appropriate for their localities, HUD also wishes to protect families participating in the Section 8 homeownership option from abusive lending practices. This final rule makes several changes that are designed to ensure that families are protected from abusive lending practices. For example, § 982.632 of this final rule clarifies that a PHA may review lender qualifications and the loan terms before authorizing homeownership assistance. The PHA may disapprove proposed financing, refinancing or other debt if the PHA determines that the debt is unaffordable or the lender or the loan terms do not meet PHA qualifications. HUD also encourages PHAs to analyze each loan (including refinancing or financing for improvements or repairs) to identify and eliminate abusive lending practices. (See Section VII. of this preamble for additional information regarding the prevention of predatory lending practices in the Section 8 homeownership option.)

Comment: The final rule should establish uniform qualification requirements for lenders. One commenter wrote that examples of this type of lender or financial program qualifications might include identifying specific entities (such as conventional mortgage lenders) that regularly participate in the secondary market or that participate in governmental lending or mortgage insurance programs; State Housing Finance Agency programs; subsidy programs administered by

states, counties, cities, or subdivisions; and nonprofit organizations.

HUD response. HUD believes such a requirement is too restrictive and could inappropriately limit available financing in some markets. The final rule continues to allow the PHA to establish requirements concerning the qualification of lenders but does not impose any for the program as a whole.

Comment: Final rule should not require or permit the PHA to establish homebuyer downpayment requirements. Several commenters opposed any homebuyer downpayment requirements under the homeownership program. One commenter wrote that requiring families to make downpayments from their own resources will effectively prevent families residing in expensive housing markets from ever participating in the homeownership option. Another commenter wrote that foreclosures are not caused by families choosing to walk away from a home because they have equity invested but because they lose their income.

HUD response. The proposed rule did not propose to establish a minimum downpayment requirement, but proposed to grant the PHA flexibility to establish a requirement for a minimum homeowner equity payment from the family's personal resources. The final rule continues to provide this flexibility to the PHA. A PHA may determine that a minimum contribution by the family for the downpayment is appropriate to demonstrate the family's commitment and readiness for the responsibilities of homeownership. HUD notes that an Individual Development Account (IDA) is considered to be a family asset under HUD's annual income regulations at § 5.609 and would, therefore, be considered a personal family resource for purposes of meeting such a PHA downpayment requirement.

Comment: Final rule should permit seller contributions to downpayment/closing costs. According to one commenter, this policy would increase housing choice for participating families.

HUD response. This final rule does not prohibit seller contributions to the downpayment or closing costs. However, the final rule continues to provide that the PHA may establish a minimum equity requirement from the family's personal resources, types of financing, and qualifications of lenders. The PHA's administrative policy on these subjects might impact on the extent to which seller contributions would be permissible. In addition, individual lenders may have underwriting criteria impacting seller contributions to the downpayment or closing costs, which would be applicable regardless of the PHA policy regarding seller contributions.

Comment: Use of FHA underwriting standards for non-FHA insured loans. Several commenters supported the requirement that all loans under the Section 8 homeownership program meet FHA underwriting criteria. On the other hand, other commenters wrote that the use of FHA underwriting standards would unduly restrict the availability of properties available for purchase. These commenters wrote that the use of FHA criteria would prevent families from using other types of flexible mortgage financing designed to assist low-income homebuyers. Some commenters also wrote that the added burden and restrictions of complying with FHA requirements would deter lenders from participating in the program.

HUD response. After considering the comments on this issue, HUD has revised the rule by removing the requirement that purchases of homes financed without FHA-insured mortgage assistance must, nonetheless, comply with the basic mortgage insurance credit underwriting requirements for FHA-insured single family mortgage loans.

HUD proposed this requirement to minimize the risk of default by imposing a minimum underwriting standard. However, HUD agrees that imposing FHA requirements on non-FHA loans would unduly restrict the availability of financing vehicles and options for Section 8 homeownership families. FHA underwriting requirements are in place for FHA mortgages to protect the solvency of the FHA fund but may not necessarily be an appropriate standard for non-FHA loans. In fact, mandating FHA underwriting standards would result in eliminating desirable non-FHA financing options for families, such as foundation funds or State programs for first-time homebuyers.

The final rule clarifies that if purchase of the home is financed with FHA-insured mortgage financing, the financing is subject to FHA insurance credit underwriting requirements. Otherwise, the underwriting standards of the individual lender and/or financing program will apply in cases where financing for purchase of the home is not FHA-insured.

Comment: PHA authority to disapprove proposed financing if the PHA determines the debt for the purchase of the home is unaffordable. One commenter recommended that the final rule should require the PHA to take a family's expenses into account in determining whether to approve the financing for a homeownership loan. Another commenter suggested that the final rule should establish uniform standards for use by PHAs in assessing the affordability of debt. The commenter wrote that a national standard will provide certainty for institutions seeking to develop programs designed to dovetail with the homeownership option. The commenter recommended that a standard similar to that used in the HOME program or the USDA Section 502 Direct loan program be adopted.

Another commenter wrote that the PHA's right to review and disapprove financing should be limited to seller financing. The commenter wrote that reputable mortgage lenders have no incentive to underwrite loans that will default.

HUD response. The final rule retains the broad PHA administrative discretion to disapprove proposed financing if the PHA determines that the debt for the purchase of the home is unaffordable. HUD believes that local administrative flexibility is appropriate, and that the decisions as to what level of debt is unaffordable or what terms of financing are appropriate are best left to the PHA.

N. Continued Assistance Requirements; Family Obligations (proposed § 982.632)

Comment: The family should obtain PHA approval prior to entering into refinancing agreements or securing additional financing on the home (whether to finance repairs, consolidate debts, or for any other reason) and the family should secure counseling before such action. One commenter made this suggestion.

HUD response. HUD agrees that the PHA should have the option to require prior PHA approval before the family enters into a refinancing agreement or secures additional financing on the home. Accordingly, § 982.632 of the final rule incorporates the suggestion made by the commenter.

Comment: HUD should develop contracts for use in the Section 8 homeownership program. One commenter wrote that a Statement of Homeowner Obligations is not a contract and would probably be insufficient if the PHA has to turn to the local courts. The commenter recommended that HUD develop two separate contracts for use by PHAs—one if the payments are made directly to the family and another for payments made directly to the lender.

HUD response. The PHA is not contractually obligated to make payments to the lender. The HAP payments to the lender are made on behalf of the family, not the PHA. If the HAP payment were to cease, the family

would still be responsible for the full monthly mortgage payment due the lender. Furthermore, mortgages are often sold and families may refinance. Encumbering the mortgage or the lender with a mandated HUD contract may ultimately discourage lender participation in the program.

Comment: Homebuyers should be required to demonstrate that real property taxes, assessments, water taxes, etc., are current on an annual basis. One commenter made this suggestion.

HUD response. HUD has not added evidence of payment of taxes as a specific requirement for continued homeownership assistance in the final rule. However, § 982.633(b)(8) of this final rule permits PHAs to establish additional requirements for the continuation of homeownership assistance, which could include such a requirement. HUD believes that imposing a requirement of this type is best left to the discretion of the individual PHA.

O. Maximum Term of Homeownership Assistance (proposed § 982.633)

Comment: What is the appropriate length of time to provide homeownership assistance to the family? Several commenters wrote in support of the ten year limit. Other commenters urged HUD to extend the 10 year limit. Many of these commenters suggested that the maximum term be extended to fifteen, twenty, or thirty years, to better reflect usual mortgage terms. The commenters urging an extension of the maximum 10 year period stated that the shorter term would discourage lenders and the secondary mortgage market from participating in the program. Several of these commenters wrote that in ten years it is unlikely that the unamortized balance of a mortgage could be refinanced at a monthly payment affordable to an unassisted homeowner, therefore resulting in a large number of mortgage defaults. Accordingly, the commenters stated that the maximum term might limit homeownership assistance to higher income families able to afford the increased mortgage payments following the termination of assistance. Further, low income families concerned about defaulting at the end of the maximum term would be forced to purchase in depressed real estate markets, such as minority and/or poverty concentrated areas.

On the other hand, a number of commenters wrote that the ten year maximum term should be reduced to three, five, or seven years. These commenters stated that by providing a mortgage subsidy for ten or more years, HUD would be promoting ongoing dependency on Section 8 assistance and reducing the availability of limited Section 8 resources for other families.

A couple of commenters wrote that the final rule should establish a uniform maximum term instead of permitting a PHA to establish a maximum term shorter than ten years. The commenters stated that without the availability of a uniform program time period, lenders and other agencies likely to provide subsidy assistance would find it difficult to develop national or regional programs to support the homeownership option. However, other commenters recommended that PHAs should have absolute flexibility to determine the maximum term of assistance based on their local housing needs.

HUD response. After carefully considering the comments on the maximum term for a family to receive homeownership assistance, HUD has significantly revised the requirement in the final rule.

HUD agrees that there is a need to establish a Federal standard regarding the maximum time that a family may receive homeownership assistance to ensure that the program is equitable for all families receiving homeownership assistance. Further, a uniform Federal standard will establish consistency across jurisdictional lines, thus facilitating wider lender participation. The final rule removes PHA discretion to establish a shorter minimum term than the Federal standard.

HUD also believes that a time limit is appropriate for homeownership assistance. The purpose of the Section 8 homeownership program goes beyond simply defraying the monthly homeownership costs as opposed to rent. Rather, the objective is to move an assisted renter into homeownership in order to foster responsibility and assist the family in ultimately achieving economic self-sufficiency. A related statutory objective is to assist renters make the transition to economic self-sufficiency. This objective is made clear from the fact that section 8(y) targets homeownership assistance to first-time homebuyers. The statute does not expand eligibility for scarce Section 8 assistance to existing homeowners.

The final rule provides for a mandatory term limit on homeownership assistance of 15 years if the initial mortgage incurred to finance purchase of the home has a term that is 20 years or longer. In all other cases, the maximum term of homeownership assistance is 10 years. HUD believes that a family should be able to assume the full responsibility for monthly homeownership expenses at the end of such time. HUD also believes that the maximum term established by this final rule is sufficient to achieve broad lender participation.

HUD understands the concerns raised by some of the commenters regarding Section 8 homeowners who, due to circumstances beyond their control, are unable to assume full responsibility for the monthly homeownership expenses at the end of the maximum term. HUD encourages PHAs and families to realistically assess the family's economic situation a year or so before the conclusion of the maximum term of the homeownership assistance. The family would then be in a position to decide whether it might be in the family's best interest to sell the property and revert to Section 8 rental assistance.

The final rule retains the provision that if the family receives homeownership assistance for different homes or from different PHAs, the total of assistance term is subject to the regulatory maximum term (15 or 10 years, depending on the length of the initial mortgage to purchase the first unit under the homeownership option).

As in the proposed rule, the final rule provides that the maximum term limit does not apply to elderly or disabled families. The final rule clarifies that, in the case of an elderly family, the exception is only applied if the family qualifies as an elderly family at the commencement of homeownership assistance. For instance, if a family is a non-elderly family when homeownership assistance commences, the family is still subject to the term limit on assistance even if the family subsequently meets the definition of an elderly family during the term. In the case of a disabled family, the exception applies if at any time during receipt of homeownership assistance the family qualifies as a disabled family.

If, during the course of homeownership assistance, the family ceases to qualify as a disabled or elderly family, the maximum term becomes applicable from the date homeownership assistance commenced. However, such a family must be provided at least 6 months of homeownership assistance after the maximum term becomes applicable (provided the family is otherwise eligible to receive homeownership assistance in accordance with this part).

Comment: Does the maximum term requirement mean that no person in the family may have received more than ten years assistance? One commenter asked whether the daughter of a head of household who has resided in a home

purchased under the homeownership option for ten years would be prohibited from applying for assistance to purchase her own home. The commenter recommended that the final rule clarify that the maximum term applies only to those family members who obtained an ownership interest through the program.

HUD response. The final rule clarifies that the time limit applies to any member of the household who has an ownership interest in the unit during any time that homeownership payments are made, or is the spouse of any member of the household who has an ownership interest in the unit at the time homeownership payments are made.

P. Amount and Distribution of Monthly Homeownership Assistance Payment (proposed § 982.634)

Comment: Families should be permitted to receive homeownership assistance for the initial 3 years of the mortgage term, even if HAP assistance is reduced to zero as a result of the annual examination of the family's income. According to the commenter, this recommendation would provide a safety net for mortgage lenders and would be consistent with current underwriting requirements, which require payments like child support to be available for a minimum of 36 months.

HUD response. The length of time a family will remain eligible for a subsidy in the homeownership program is the same as in the rental program. During this time, the family has a subsidy slot reserved, thereby denying use of the assistance by another deserving family. In light of the severe needs for housing assistance and the length of time applicants must already wait to receive assistance, HUD has not revised the rule to increase the length of time the subsidy slot is reserved for a family who has a relatively high income and no longer qualifies for a subsidy.

Comment: The final rule should provide that a stable bedroom-size assistance level will be provided to the family throughout the life of the mortgage. Three commenters worried that as children leave home Section 8 assistance levels would be reduced, therefore jeopardizing the ability of a family to maintain its mortgage payments. The commenters wrote that such fluctuating assistance levels would discourage lenders from participating in the program.

HUD response. HUD does not need to revise the proposed rule to address this concern. The final rule retains the provision that protects the homeowner from decreases in the normally applicable payment standard. The payment standard for a family receiving homeownership assistance is the greater of the payment standard at the commencement of homeownership assistance for occupancy of the home and the payment standard at the most recent regular reexamination of family income and composition since the commencement of homeownership assistance for occupancy of the home. This policy minimizes the risk of default due to decreases in the payment standard or changes in family composition.

Comment: Should the family or the lender receive the HAP payments? Several commenters suggested that HAP payments should only be made directly to the lender and never to the family. One of the commenters wrote that this would increase the efficiency of program administration. Other commenters were concerned that a family might inappropriately use the funds and potentially jeopardize the mortgage. One of the commenters also suggested that shelter costs (such as debt service, property taxes, insurance and reserve for replacement) be built directly into the mortgage payment.

Several other commenters wrote that the payments should be made directly to the family and not the lender. The commenters wrote that it would be an administrative nightmare for lenders to be required to accept separate payments from the homeowner (for the family's portion) and the PHA. The commenters recommended that the assistance payment should be made by the PHA as a direct automatic deposit into the family's bank account with provisions for automatic withdrawal of the mortgage amount by the lender.

HUD comment. This final rule continues to provide that the PHA may make the homeownership assistance payment either directly to the family or to a lender on behalf of the family. The PHA may determine it is necessary to make housing assistance payments directly to the family in order to secure lender participation, thereby avoiding the possibility that both the PHA and the family will be sending checks to the lender for the mortgage payment. On the other hand, some lenders may indicate their participation is contingent on receiving the payment directly from the PHA.

The final rule clarifies that if the PHA decides to make the homeownership assistance payment directly to the lender, and the assistance payment exceeds the amount due to the lender, the PHA must pay the excess amount directly to the family.

Comment: To prevent loss of home due to unpaid taxes, the final rule should require that the mortgage payment include taxes. One commenter made this suggestion.

HUD response. This is a matter that is more appropriately left to negotiation between the lender and the family, subject to any local or state laws.

Comment: PHAs should be permitted to set a separate payment standard for the homeownership program. Several commenters wrote that PHAs should have the latitude to set a separate payment standard for the homeownership option. For example, a payment standard of 95% of the Fair Market Rent (FMR) might work for the rental market, but for the for-sale market a payment standard of 105% might be more appropriate. Another commenter wrote that, if the unit selected by the participating family is new, the PHA should have the latitude to adjust the payment standard to account for the superiority of the housing unit.

HUD response. HUD has not made the recommended changes. The subsidy level for a homeowner should not be higher than for a renter under the tenant-based program. Fewer families would be assisted if HUD provided a higher subsidy to homeowners. Also, it would not be equitable to provide larger subsidies for families who are more likely (on average) to have higher incomes than their counterparts receiving rental assistance.

Comment: What do ''monthly homeownership expenses'' include? Two commenters requested clarification regarding the items included in ''monthly homeownership expenses.''

HUD response. The final rule lists the items that comprise the monthly homeownership expenses at § 982.635(c).

Comment: Homeownership expenses should not include maintenance expenses nor major repairs and replacements. One commenter wrote that these are expenses that come with the risk of homeownership. The commenter wrote that families participating in the program should have the means to maintain their home and protect the investment without subsidy.

HUD response. HUD has not adopted this comment. The costs of maintaining and repairing a home are significant expenses associated with homeownership. HUD does not believe it is inappropriate to consider these costs in determining the monthly homeownership expense for a family. Furthermore, in any case where the family's monthly homeownership expenses exceed the applicable payment

standard, the maximum subsidy that may be paid on behalf of a family is capped by the applicable payment standard. Reimbursement for such expenses is therefore limited by the voucher subsidy formula.

Comment: In addition to the allowance for major home repair and replacements, there should also be consideration for the cost of modifications to make a home accessible to owners with disabilities. Several commenters wrote in support of this change to the proposed rule.

HUD response. The final rule clarifies that where a member of the family is a person with disabilities, mortgage debt incurred to finance costs for major repairs, replacements or improvements for the home may include debt incurred by the family to finance costs needed to make the home accessible for the disabled person, if the PHA determines the allowance is needed as a reasonable accommodation.

Comment: Other items should be considered in determining the homeownership expenses. Several commenters suggested the consideration of various items in the determination of homeownership expenses, including water and sewer fees; condominium fees; and homeowner association fees.

HUD response. Water and sewer fees were already covered in the proposed rule under the PHA utility allowance for the home. The final rule has been amended to provide that if the home is a cooperative or condominium unit, homeownership expenses may also include cooperative or condominium operating charges or maintenance fees, or charges assessed by the condominium or cooperative homeowner association.

Comment: HUD should develop a uniform rule for allowances of homeownership expenses. The proposed rule would allow PHAs to adopt policies for determining the amount of homeownership expenses in determining the family's Section 8 subsidy amount. Several commenters stated that giving discretion to PHAs to exclude any of these amounts as expenses would create great inequities across jurisdiction lines. The commenters suggested that HUD adopt a uniform rule regarding homeownership expenses. One of the commenters recommended that all of the listed items be considered homeownership expenses.

HUD response. The proposed rule and the final rule do not provide the PHA with the discretion to exclude any of the listed homeownership expenses or to add any additional items. The PHA is responsible for determining the appropriate allowance amount provided for maintenance expenses; major repairs and replacements; and utilities (which is the same utility allowance amount that applies to the voucher program as a whole). HUD believes it is appropriate for the PHA to determine the allowance amounts provided for the homeownership expenses, since a realistic projection of these average costs will vary from jurisdiction to jurisdiction.

Q. Portability (proposed § 982.635)

Comment: Applicability of portability to the homeownership program. Several commenters suggested that homeownership assistance should be freely portable. The commenters wrote that restricting portability would prohibit a family living in a center city from pursuing job opportunities in suburban areas where the homeownership option is not provided.

One commenter suggested that if a person with a disability finds a home outside the jurisdiction of the initial PHA, the initial PHA should be permitted to continue to administer the program where the receiving PHA will not provide homeownership assistance. The commenter wrote that the final rule could also require the receiving PHA to provide homeownership assistance to the person with the disability.

Several other commenters recommended that portability of assistance under the Section 8 homeownership program between PHA jurisdictions should be prohibited. One commenter wrote that Section 8 homeownership funding is provided by HUD to assist local needs and should not be transferable to another jurisdiction that has chosen not to provide such assistance.

HUD response. As noted above, HUD has clarified the portability procedures of the proposed rule, which provide that the family may qualify to move outside the initial PHA jurisdiction with continued assistance under the voucher program. In general, the receiving PHA is not required to permit families that move into the PHA's jurisdiction to receive any special housing type (including homeownership assistance), regardless of whether the family was receiving such assistance at the initial PHA. While the family participating in the Housing Choice Voucher program has the portability right to move anywhere in the country where a PHA administering tenant-based assistance has jurisdiction, Section 8(y) also provides the PHA with the sole discretion to determine whether to make homeownership assistance available. A family under the homeownership option retains the portability rights of the Section 8 voucher, but may only continue to receive homeownership assistance if the receiving PHA runs a homeownership program and is accepting additional homeownership families.

Comment: PHAs should be authorized to enter into homeownership transactions outside their normal service areas, provided no other PHA runs a homeownership program in that area. The commenter wrote that this policy would follow the principle of promoting maximum portability wherever the PHA is willing to administer the program.

HUD response. HUD has not adopted this comment. The PHA area of operation is determined by state law, and the language of Section 8(y) does not provide a statutory basis for overriding state law with respect to PHA administration of the homeownership option.

R. Move With Continued Tenant-Based Assistance (proposed § 982.636)

Comment: A family should not be permitted to use the homeownership option more than once. One commenter questioned whether the policy permitting a family to purchase multiple units with voucher assistance was a prudent use of scarce housing subsidy dollars.

HUD response. Both the proposed and final rules permit the family to purchase one or more subsequent homes with continued Section 8 assistance, provided that the head of household or spouse has not defaulted on a mortgage securing debt incurred to purchase the home (see §§ 982.627(e) and 982.637 of this final rule). HUD believes it is appropriate to permit family mobility in the homeownership program. Families may need to move for a number of compelling reasons such as safer neighborhoods, better schools, because more or less space is needed, or to be closer to a job.

The final rule provides that the PHA may not commence homeownership assistance for occupancy of the new unit so long as any family member owns any title or other interest in the prior home. As noted earlier, the final rule provides that the family cannot be assisted if they own another residential property. HUD agrees that it is appropriate to limit homeownership assistance only to families that do not own other residential property. The purpose of the program is to help families meet their immediate housing needs and limited assistance funds should not be provided to families who currently own another home, regardless of whether the family

chooses not to make that property their primary residence.

Comment: The final rule should provide for the recapture of homeownership assistance upon the sale or transfer of the home. Several commenters made this suggestion. There was no consensus among these commenters as to the extent of the recapture. Two of the commenters suggested that recaptures should only apply to half of the homeownership assistance payments made to or on behalf of the family. One of these commenters also suggested that the PHA should use the recaptured proceeds to assist other Section 8 families. Another commenter wrote that any recapture provision should be designed to limit the amount of equity that a participant may realize through the sale of a home under the Section 8 homeownership program.

HUD response. HUD agrees with the commenters that it is appropriate for HUD to recapture homeownership assistance upon the sale or refinancing of the home. Further, HUD agrees with the commenters that the recaptured assistance should be used to assist additional housing choice voucher assistance families. HUD recognizes that the possibility of accumulating equity in the property and the realization of profit upon sale is an important facet of homeownership. However, HUD believes these benefits can be realized even if a portion of the assistance payments made on behalf of the family are retained by the PHA out of the net sales proceeds of the property in order to further assist other needy families.

The final rule establishes a new § 982.640 that provides for such recaptures. PHAs shall recapture a percentage of the homeownership assistance defined in the regulations upon the sale or refinancing of the home. Sales proceeds that are used by the family to purchase a new home with Section 8 homeownership assistance are not subject to recapture. Further, a family may refinance to take advantage of lower interest rates, or better mortgage terms, without any recapture penalty. Only those proceeds realized upon refinancing that are retained by the family (for example during a ''cash-out'' of the refinanced debt) are subject to the new recapture provision.

New § 982.640 requires that, upon purchase of the home, a family receiving homeownership assistance shall execute documentation as required by HUD, and consistent with State and local law, that secures the PHA's right to recapture the homeownership assistance. The lien securing the recapture of homeownership subsidy may be subordinated to a refinanced mortgage.

The homeownership assistance subject to recapture shall automatically be reduced over a 10 year period, beginning one year from the purchase date, in annual increments of 10 percent. For example, if the family sells the home during the first year after purchase, the PHA will recapture 100% of the homeownership assistance provided to the family. If the family sells one year (but less than two years) after purchase, the PHA will recapture 90% of the homeownership assistance, etc. At the end of the 10 year period, the amount homeownership assistance subject to recapture will be zero.

Comment: HUD should clarify how to treat a rollover sale by which the family sells one unit to purchase another. The commenter questioned if the profit from the sale of the first property should be counted as income (for purposes of determining the total tenant payment) if the family purchased or rented another unit with Section 8 assistance.

HUD response. In calculating the family income, the treatment of income realized by the family as a result of the sale of a home purchased with assistance under the homeownership program is no different than treatment of net income from real property under 24 CFR part 5. However, in accordance with § 982.640 of this final rule, the PHA may recapture a percentage of the homeownership assistance provided to family upon the sale or refinancing of the home (see the discussion of the preceding comment). Any profit remaining from the sale or refinancing after the recapture is ''income'', and may reduce the amount of future subsidy for the family.

Comment: If a family participating in the homeownership program decides to ''switch back'' to rental assistance, must the family first sell its home before receiving rental assistance?

HUD response. Yes, the family must sell its home before the family can receive continued Section 8 rental or homeownership assistance in another unit. The final rule makes this clarification.

Comment: What ramifications should a family default have on continued participation in the rental program? Several commenters suggested that a family that defaults on its mortgage should not be allowed to receive Section 8 rental assistance. The commenters recommended that the family should be placed on the waiting list. However, there was no consensus among these commenters regarding where on the waiting list the family should be placed. For example, one commenter wrote that the family should not be penalized through placement at the end of the waiting list. Another commenter, however, recommended that a defaulting family should be placed at the bottom of the Section 8 waiting list.

Two commenters wrote that a family that defaults should be required to re-apply for Section 8 assistance (rather than being placed back on the waiting list). One of the commenters believed that it would be unfair to other families to place the defaulting family on the waiting list (even at the bottom of the list) since in many jurisdictions Section 8 waiting lists are closed for an extended periods.

Several commenters recommended that the PHA should have the flexibility to develop its own guidelines regarding the provision of rental assistance after a default or to handle such matters on a case-by-case basis. The commenters wrote that there may be circumstances beyond the recipient's control (such as death, divorce, disability, or job lay-off) that result in a default. The commenters wrote that a recipient should not be penalized in these instances.

HUD response. The proposed and final rule both provide that the PHA may terminate the family's participation in the voucher program if the family fails to comply with the terms of the mortgage (for instance, if the family defaults). Like other grounds for denial or termination of voucher assistance, the decision whether to deny the family's continued participation in the voucher program or to permit the family to automatically be placed back on the waiting list rests with the PHA.

The final rule also retains the statutory provision that if the family defaults on an FHA-insured mortgage, the PHA *must* terminate the Section 8 assistance and may not issue the family a rental voucher unless the family: (1) Moves from the unit within the specified time period established or approved by HUD; and (2) conveys the title to the home, as required by HUD, to HUD or HUD's designee. Even if the family complies with these requirements, the PHA may still deny the family continued participation in the rental voucher program, since the family did not comply with the family obligations under § 982.633.

The final rule continues to leave the decision on the ramifications of the termination of homeownership assistance because of a default with the PHA. The PHA may allow the family to move and receive rental assistance (except in cases where the family defaulted on an FHA-insured mortgage and has not complied with HUD requirements for conveyance and

possession of the property). The PHA may also choose, consistent with the PHA policy in the PHA administrative plan, to require the family to reapply for rental assistance. The PHA may place the family at the bottom of the list, at the top of the list, or wherever the family would normally fall based on PHA preferences. The PHA may also prohibit the family from re-applying for assistance for a certain period of time. HUD notes that the family may request an informal hearing if a current participant that has defaulted on a mortgage for a Section 8 homeownership unit is denied a rental voucher.

Comment: The incentives provided for rapid possession and title conveyance for homes with FHA mortgage defaults should be extended to all lenders including secondary market agencies. Two commenters made this suggestion.

HUD response. As noted above, the PHA must deny the family continued assistance if the family defaults on an FHA-insured mortgage and does not comply with HUD requirements. HUD has not extended the mandatory termination provision to a family who defaults on a non-FHA mortgage.

Section 8(y) provides for the mandatory termination of a family that does not comply with HUD requirements to convey title and vacate the property because the Federal government has a vested interest in protecting the FHA insurance fund. HUD does not believe that it is appropriate to extend this mandatory termination policy in the case of non-FHA mortgages. There may be circumstances where the terms of the mortgage or the conditions for rapid possession and title conveyance to the lender are not reasonable. The PHA should have the discretion to decide how to address these situations.

Comment: The final rule should require lenders to provide a copy to the PHA of any default notice at the same time such notice is sent to the borrower. One commenter made this suggestion.

HUD response. HUD has not revised the rule to incorporate this suggestion. HUD believes the recommended change could negatively impact lender participation and the sale of mortgages on the secondary market. Section 982.633(b)(6) of the final rule retains the requirement that the family must notify the PHA if the family defaults on a mortgage securing any debt incurred to purchase the home.

S. Administrative Fees (proposed § 982.637)

Comment: Additional HUD funding is needed for implementation of new program. One commenter identified various requirements of the homeownership option that will require staff time and new staff expertise to carry out. The commenter suggested that HUD should compensate PHAs on a performance basis and provide some preliminary funding to set up the program. Another commenter wrote that HUD should provide a one time incentive of $5,000 for each homebuyer family as an incentive for PHAs to participate.

HUD response. The final rule has not adopted these suggestions. Section 8(y) is intended to provide PHAs with added flexibility in serving the housing needs of their local communities within the existing framework and funding constraints of the Section 8 Housing Choice Voucher program. HUD does not have any additional or separate funding to increase administrative fees for PHAs that choose to exercise the homeownership option.

It is true that the PHA has some additional administrative duties for homeownership families. However, there is a corresponding reduction in the administrative responsibilities that the PHA must perform for a family receiving rental assistance over the duration of the family's participation in the program. For example, the PHA is not required to determine rent reasonableness or conduct annual HQS inspections under the homeownership option.

Comment: HUD should consider allowing the PHA to impose a one-time fee on families participating in the program to offset additional PHA expenses, such as marketing, developing program materials, and coordinating activities with homebuyer counselors. One commenter made this suggestion.

HUD response. HUD has not adopted this suggestion. PHAs may not charge families fees to participate in the homeownership program or for the normal program responsibilities to be performed by the PHA. Although there are additional PHA upfront responsibilities associated with a family purchasing a home, the time necessary to perform the PHA's ongoing responsibilities will decrease since rent reasonableness and annual HQS inspections are not required in the homeownership program.

VII. Prevention of Predatory Lending Practices

While HUD believes that PHAs should have the discretion to determine what financing requirements are appropriate for their localities, HUD also wishes to protect families participating in the Section 8 homeownership option from abusive lending practices. HUD has joined with the Department of the Treasury to develop recommendations on legislative, regulatory, and other steps to curb predatory mortgage practices. These recommendations, which are contained in a joint HUD-Treasury report, are based on information that HUD and the Department of the Treasury gathered as co-chairs of the National Predatory Lending Task Force, convened in April, 2000. Through public forums with industry, consumers, consumer advocates, and local and state governments in Washington, Atlanta, Los Angeles, New York, Baltimore, and Chicago, HUD and the Department of the Treasury collected evidence on the nature and growing incidence of predatory lending practices nationwide.

As noted above, this final rule makes several changes that are designed to ensure that families are protected from abusive lending practices. For example, § 982.632 of this final rule clarifies that a PHA may review lender qualifications and the loan terms before authorizing homeownership assistance. The PHA may disapprove proposed financing, refinancing or other debt if the PHA determines that the debt is unaffordable or the lender or the loan terms do not meet PHA qualifications.

PHAs are also encouraged to analyze each loan (including refinancing or financing for improvements or repairs) before providing assistance to determine whether the lender and the loan meet its qualifications. While no one set of abusive practices or terms characterizes a predatory mortgage loan, PHAs should be particularly careful of loans with the following features: loans in which financing costs represent a high percentage of the total loan amount; loans that include high credit insurance premiums; balloon payments that the borrower will be unable to repay; interest rates (including variable rates) significantly higher than conventional mortgages; pre-payment penalties, especially penalties that extend over long terms; high ratios of family debt to income; loans based on unverified sources of income or without regard to the borrower's ability to repay; excessive fees or fees ''packed'' into the loan amount without the borrower's understanding; and ''loan flipping'' accompanied by high fees (including prepayment penalties that strip the borrower's equity with each successive refinancing).

HUD will revise its regulations for the Section 8 homeownership option, as appropriate, to implement legislative or other changes made in response to the

joint HUD-Treasury report. A copy of the joint report may be obtained through HUD's internet homepage at www.hud.gov.

VIII. Performance-Based Standards for the Section 8 Homeownership Option

HUD intends to develop performance-based standards for the Section 8 homeownership option. HUD would use these standards to monitor PHA program performance in administering their Section 8 homeownership programs, and to determine whether HUD intervention is appropriate due to excessive mortgage default rates.

IX. Findings and Certifications

Paperwork Reduction Act

The homeownership option is a special housing type under 24 CFR part 982, subpart M, of the unified rule for the Section 8 tenant-based voucher program. The information collection requirements of the Section 8 rental voucher program approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) are not increased by the implementation of this new special housing type. While the rule substitutes several variations to existing requirements under the normal Section 8 tenant-based program, the homeownership option does not increase the total reporting and recordkeeping burden resulting from the collection of information for the Section 8 voucher program. The following provisions of this final rule contain information collections: §§ 982.305, 982.629, 982.631, 982.633, and 982.638.

The OMB approval number for the Section 8 tenant-based assistance program is 2577–0169. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223) at the proposed rule stage. That FONSI remains applicable to this final rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this final rule under Executive Order 12866, *Regulatory Planning and Review.* OMB determined that this final rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the final rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) (the RFA), has reviewed and approved this final rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows:

(1) *A Substantial Number of Small Entities Will Not Be Affected.* The final rule is exclusively concerned with public housing agencies that administer tenant-based housing assistance under section 8 of the United States Housing Act of 1937. Specifically, the final rule will permit a PHA to provide Section 8 tenant-based assistance to an eligible family that purchases a dwelling unit that will be occupied by the family. Under the definition of ''Small governmental jurisdiction'' in section 601(5) of the RFA, the provisions of the RFA are applicable only to those few PHAs that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial.

(2) *No Significant Economic Impact.* The final rule will not change the amount of funding available under the Section 8 voucher program. Accordingly, the economic impact of this rule will not be significant, and it will not affect a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule is exclusively concerned with the establishment of an alternative use of Section 8 rental voucher assistance. Specifically, the rule authorizes a PHA to provide tenant-based assistance for an eligible family that purchases a dwelling unit that will be occupied by the family. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Catalog of Domestic Assistance Number

The Catalog of Domestic Assistance number for the program affected by this final rule is 14.855.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 903

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

For the reasons described in the preamble, HUD amends 24 CFR parts 5, 903 and 982 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

2. In § 5.603(b), amend the definition of *''net family assets''* by adding new paragraph (4) to read as follows:

§ 5.603 Definitions.

* * * * *

(d) * * *

Net family assets. * * *

(4) For purposes of determining annual income under § 5.609, the term ''net family assets'' does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

* * * * *

PART 903—PUBLIC HOUSING AGENCY PLANS

3. The authority citation for 24 CFR part 903 continues to read as follows:

Authority: 42 U.S.C. 1437c; 42 U.S.C. 3535(d).

4. Revise § 903.11(c)(1) to read as follows:

§ 903.11 Are certain PHAs eligible to submit a streamlined Annual Plan?

* * * * *

(c) * * *

(1) For high performing PHAs, the streamlined Annual Plan must include the information required by § 903.7(a), (b), (c), (d), (g), (h), (k), (m), (n), (o), (p) and (r). The information required by § 903.7(m) must be included only to the extent this information is required for the PHA's participation in the public housing drug elimination program and the PHA anticipates participating in this program in the upcoming year. The information required by § 903.7(k) must be included only to the extent that the PHA participates in homeownership programs under section 8(y).

* * * * *

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

5. The authority citation for 24 CFR part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

Subpart A—General Information

6. Amend § 982.4 as follows:

a. In paragraph (a)(3), in the first sentence revise the phrase ''and utility reimbursement'' to read ''utility reimbursement'' and ''welfare assistance'';

b. In paragraph (b), revise the definitions of ''*Cooperative*,'' and ''*Special housing types*'';

c. In paragraph (b), remove the definition of ''*Mutual housing*''; and

d. In paragraph (b), add the definitions of ''*Cooperative member,*'' ''*Family,*'' ''*First-time homeowner,*'' ''*Home,*'' ''*Homeowner,*'' ''*Homeownership assistance,*'' ''*Homeownership expenses,*'' ''*Homeownership option,*'' ''*Interest in the home,*'' ''*Membership shares,*'' ''*Present ownership interest,*'' and ''*Statement of homeowner obligations*'' in alphabetical order.

§ 982.4 Definitions.

* * * * *

(b) * * *

Cooperative. Housing owned by a corporation or association, and where a member of the corporation or association has the right to reside in a particular unit, and to participate in management of the housing.

Cooperative member. A family of which one or more members owns membership shares in a cooperative.

* * * * *

Family. A person or group of persons, as determined by the PHA, approved to reside in a unit with assistance under the program. See discussion of family composition at § 982.201(c).

* * * * *

First-time homeowner. In the homeownership option: A family of which no member owned any present ownership interest in a residence of any family member during the three years before commencement of homeownership assistance for the family. The term ''first-time homeowner'' includes a single parent or displaced homemaker (as those terms are defined in 12 U.S.C. 12713) who, while married, owned a home with his or her spouse, or resided in a home owned by his or her spouse.

* * * * *

Home. In the homeownership option: A dwelling unit for which the PHA pays homeownership assistance.

Homeowner. In the homeownership option: A family of which one or more members owns title to the home.

Homeownership assistance. In the homeownership option: Monthly homeownership assistance payments by the PHA. Homeownership assistance payment may be paid to the family, or to a mortgage lender on behalf of the family.

Homeownership expenses. In the homeownership option: A family's allowable monthly expenses for the home, as determined by the PHA in accordance with HUD requirements (see § 982.635).

Homeownership option. Assistance for a homeowner or cooperative member under § 982.625 to § 982.641. A special housing type.

* * * * *

Interest in the home. In the homeownership option:

(1) In the case of assistance for a homeowner, ''interest in the home'' includes title to the home, any lease or other right to occupy the home, or any other present interest in the home.

(2) In the case of assistance for a cooperative member, ''interest in the home'' includes ownership of membership shares in the cooperative, any lease or other right to occupy the home, or any other present interest in the home.

* * * * *

Membership shares. In the homeownership option: shares in a cooperative. By owning such cooperative shares, the share-owner has the right to reside in a particular unit in the cooperative, and the right to participate in management of the housing.

* * * * *

Present ownership interest. In the homeownership option: ''Present ownership option'' in a residence includes title, in whole or in part, to a residence, or ownership, in whole or in part, of membership shares in a cooperative. ''Present ownership interest'' in a residence does not include the right to purchase title to the residence under a lease-purchase agreement.

* * * * *

Special housing types. See subpart M of this part 982. Subpart M of this part states the special regulatory requirements for: SRO housing, congregate housing, group home, shared housing, manufactured home (including manufactured home space rental), cooperative housing (rental assistance for cooperative member) and homeownership option (homeownership assistance for cooperative member or first-time homeowner).

Statement of homeowner obligations. In the homeownership option: The family's agreement to comply with program obligations.

* * * * *

Subpart G—Leasing a Unit

7. Add § 982.305(b)(3) to read as follows:

§ 982.305 PHA approval of assisted tenancy.

* * * * *

(b) * * *

(4) In the case of a unit subject to a lease-purchase agreement, the PHA

must provide written notice to the family of the environmental requirements that must be met before commencing homeownership assistance for the family (see § 982.626(c)).

* * * * *

8. Add § 982.317 to read as follows:

§ 982.317 Lease-purchase agreements.

(a) A family leasing a unit with assistance under the program may enter into an agreement with an owner to purchase the unit. So long as the family is receiving such rental assistance, all requirements applicable to families otherwise leasing units under the tenant-based program apply. Any homeownership premium (e.g., increment of value attributable to the value of the lease-purchase right or agreement such as an extra monthly payment to accumulate a downpayment or reduce the purchase price) included in the rent to the owner that would result in a higher subsidy amount than would otherwise be paid by the PHA must be absorbed by the family.

(b) In determining whether the rent to owner for a unit subject to a lease-purchase agreement is a reasonable amount in accordance with § 982.503, any homeownership premium paid by the family to the owner must be excluded when the PHA determines rent reasonableness.

Subpart H—Where Family Can Live and Move

9. Revise § 982.352(a)(6) to read as follows:

§ 982.352 Eligible housing.

(a) * * *

(6) A unit occupied by its owner or by a person with any interest in the unit.

* * * * *

Subpart M—Special Housing Types

10. Amend § 982.601 as follows:

a. Revise paragraphs (a), (b)(1), and (b)(2);

b. Remove paragraph (d);

c. Redesignate paragraph (c) as paragraph (d);

d. Remove the first sentence of newly designated paragraph (d); and

e. Add new paragraphs (c) and (e) as set forth below.

§ 982.601 Overview.

(a) *Special housing types.* This subpart describes program requirements for special housing types. The following are the special housing types:

(1) Single room occupancy (SRO) housing;

(2) Congregate housing;

(3) Group home;

(4) Shared housing;

(5) Manufactured home;

(6) Cooperative housing (excluding families that are not cooperative members); and

(7) Homeownership option.

(b) *PHA choice to offer special housing type.* (1) The PHA may permit a family to use any of the following special housing types in accordance with requirements of the program: single room occupancy (SRO) housing, congregate housing, group home, shared housing, manufactured home when the family owns the home and leases the manufactured home space, cooperative housing or homeownership option.

(2) In general, the PHA is not required to permit families (including families that move into the PHA program under portability procedures) to use any of these special housing types, and may limit the number of families using special housing types.

* * * * *

(c) *Program funding for special housing types.* (1) HUD does not provide any additional or designated funding for special housing types, or for a specific special housing type (e.g, the homeownership option). Assistance for special housing types is paid from program funding available for the PHA's tenant-based program under the consolidated annual contributions contract.

(2) The PHA may not set aside program funding or program slots for special housing types or for a specific special housing type.

* * * * *

(e) *Applicability of requirements.* (1) Except as modified by this subpart, the requirements of other subparts of this part apply to the special housing types.

(2) Provisions in this subpart only apply to a specific special housing type. The housing type is noted in the title of each section.

(3) Housing must meet the requirements of this subpart for a single special housing type specified by the family. Such housing is not subject to requirements for other special housing types. A single unit cannot be designated as more than one special housing type.

11. Amend § 982.619 as follows:

a. Revise paragraph (a);

b. Redesignate paragraph (d) as paragraph (e); and

c. Add new paragraph (d).

§ 982.619 Cooperative housing.

(a) *Assistance in cooperative housing.* This section applies to rental assistance for a cooperative member residing in cooperative housing. However, this section does not apply to:

(1) Assistance for a cooperative member under the homeownership option pursuant to § 982.625 through § 982.641; or

(2) Rental assistance for a family that leases a cooperative housing unit from a cooperative member (such rental assistance is not a special housing type, and is subject to requirements in other subparts of this part 982).

* * * * *

(d) *Maintenance.* (1) During the term of the HAP contract between the PHA and the cooperative, the dwelling unit and premises must be maintained in accordance with the HQS. If the dwelling unit and premises are not maintained in accordance with the HQS, the PHA may exercise all available remedies, regardless of whether the family or the cooperative is responsible for such breach of the HQS. PHA remedies for breach of the HQS include recovery of overpayments, abatement or other reduction of housing assistance payments, termination of housing assistance payments and termination of the HAP contract.

(2) The PHA may not make any housing assistance payments if the contract unit does not meet the HQS, unless any defect is corrected within the period specified by the PHA and the PHA verifies the correction. If a defect is life-threatening, the defect must be corrected within no more than 24 hours. For other defects, the defect must be corrected within the period specified by the PHA.

(3) The family is responsible for a breach of the HQS that is caused by any of the following:

(i) The family fails to perform any maintenance for which the family is responsible in accordance with the terms of the cooperative occupancy agreement between the cooperative member and the cooperative;

(ii) The family fails to pay for any utilities that the cooperative is not required to pay for, but which are to be paid by the cooperative member;

(iii) The family fails to provide and maintain any appliances that the cooperative is not required to provide, but which are to be provided by the cooperative member; or

(iv) Any member of the household or guest damages the dwelling unit or premises (damages beyond ordinary wear and tear).

(4) If the family has caused a breach of the HQS for which the family is responsible, the PHA must take prompt and vigorous action to enforce such family obligations. The PHA may

terminate assistance for violation of family obligations in accordance with § 982.552.

(5) Section 982.404 does not apply to assistance for cooperative housing under this section.

* * * * *

12. Add §§ 982.625 through 982.641 under a new undesignated heading ''Homeownership Option'' to read as follows:

Homeownership Option

Sec.

982.625 Homeownership option: General.
982.626 Homeownership option: Initial requirements.
982.627 Homeownership option: Eligibility requirements for families.
982.628 Homeownership option: Eligible units.
982.629 Homeownership option: Additional PHA requirements for family search and purchase.
982.630 Homeownership option: Homeownership counseling.
982.631 Homeownership option: Home inspections and contract of sale.
982.632 Homeownership option: Financing purchase of home; affordability of purchase.
982.633 Homeownership option: Continued assistance requirements; Family obligations.
982.634 Homeownership option: Maximum term of homeownership assistance.
982.635 Homeownership option: Amount and distribution of monthly homeownership assistance payment.
982.636 Homeownership option: Portability.
982.637 Homeownership option: Move with continued tenant-based assistance.
982.638 Homeownership option: Denial or termination of assistance for family.
982.639 Homeownership option: Administrative fees.
982.640 Homeownership option: Recapture of homeownership assistance.
982.641 Homeownership option: Applicability of other requirements.

§ 982.625 Homeownership option: General.

(a) The homeownership option is used to assist a family residing in a home purchased and owned by one or more members of the family.

(b) A family assisted under the homeownership option may be a newly admitted or existing participant in the program.

(c) The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and useable by persons with disabilities in accordance with part 8 of this title. (See § 982.316 concerning occupancy by a live-in aide.)

(d) The PHA must have the capacity to operate a successful Section 8 homeownership program. The PHA has the required capacity if it satisfies either paragraph (d)(1), (d)(2), or (d)(3) of this section.

(1) The PHA establishes a minimum homeowner downpayment requirement of at least 3 percent of the purchase price for participation in its Section 8 homeownership program, and requires that at least one percent of the purchase price come from the family's personal resources;

(2) The PHA requires that financing for purchase of a home under its Section 8 homeownership program:

(i) Be provided, insured, or guaranteed by the state or Federal government;

(ii) Comply with secondary mortgage market underwriting requirements; or

(iii) Comply with generally accepted private sector underwriting standards; or

(3) The PHA otherwise demonstrates in its Annual Plan that it has the capacity, or will acquire the capacity, to successfully operate a Section 8 homeownership program.

§ 982.626 Homeownership option: Initial requirements.

(a) *List of initial requirements.* Before commencing homeownership assistance for a family, the PHA must determine that all of the following initial requirements have been satisfied:

(1) The family is qualified to receive homeownership assistance (see § 982.627);

(2) The unit is eligible (see § 982.628); and

(3) The family has satisfactorily completed the PHA program of required pre-assistance homeownership counseling (see § 982.630).

(b) *Additional PHA requirements.* Unless otherwise provided in this part, the PHA may limit homeownership assistance to families or purposes defined by the PHA, and may prescribe additional requirements for commencement of homeownership assistance for a family. Any such limits or additional requirements must be described in the PHA administrative plan.

(c) *Environmental requirements.* The PHA is responsible for complying with the authorities listed in § 58.6 of this title requiring the purchaser to obtain and maintain flood insurance for units in special flood hazard areas, prohibiting assistance for acquiring units in the coastal barriers resource system, and requiring notification to the purchaser of units in airport runway clear zones and airfield clear zones.

§ 982.627 Homeownership option: Eligibility requirements for families.

(a) *Determination whether family is qualified.* The PHA may not provide homeownership assistance for a family unless the PHA determines that the family satisfies all of the following initial requirements at commencement of homeownership assistance for the family:

(1) The family has been admitted to the Section 8 Housing Choice Voucher program, in accordance with subpart E of this part.

(2) The family satisfies any first-time homeowner requirements (described in paragraph (b) of this section).

(3) The family satisfies the minimum income requirement (described in paragraph (c) of this section).

(4) The family satisfies the employment requirements (described in paragraph (d) of this section).

(5) The family has not defaulted on a mortgage securing debt to purchase a home under the homeownership option (see paragraph (e) of this section).

(6) Except for cooperative members who have acquired cooperative membership shares prior to commencement of homeownership assistance, no family member has a present ownership interest in a residence at the commencement of homeownership assistance for the purchase of any home.

(7) Except for cooperative members who have acquired cooperative membership shares prior to the commencement of homeownership assistance, the family has entered a contract of sale in accordance with § 982.631(c).

(8) The family also satisfies any other initial requirements established by the PHA (see § 982.626(b)). Any such additional requirements must be described in the PHA administrative plan.

(b) *First-time homeowner requirements.* At commencement of homeownership assistance for the family, the family must be any of the following:

(1) A first-time homeowner (defined at § 982.4);

(2) A cooperative member (defined at § 982.4); or

(3) A family of which a family member is a person with disabilities, and use of the homeownership option is needed as a reasonable accommodation so that the program is readily accessible to and usable by such person, in accordance with part 8 of this title.

(c) *Minimum income requirements.* (1) At commencement of homeownership assistance for the family, the family must demonstrate that the annual income (gross income), as determined by the PHA in accordance with § 5.609 of this title, of the adult family members who will own

the home at commencement of homeownership assistance is not less than the Federal minimum hourly wage multiplied by 2,000 hours.

(2)(i) Except in the case of an elderly family or a disabled family (see the definitions of these terms at § 5.403(b) of this title), the PHA shall not count any welfare assistance received by the family in determining annual income under this section.

(ii) The disregard of welfare assistance income under paragraph (c)(2)(i) of this section only affects the determination of minimum annual income used to determine if a family initially qualifies for commencement of homeownership assistance in accordance with this section, but does not affect:

(A) The determination of income-eligibility for admission to the voucher program;

(B) Calculation of the amount of the family's total tenant payment (gross family contribution); or

(C) Calculation of the amount of homeownership assistance payments on behalf of the family.

(iii) In the case of an elderly family or a disabled family, the PHA shall count welfare assistance in determining annual income.

(3) A PHA may not establish a minimum income requirement in addition to the minimum income standard established by this paragraph.

(d) *Employment requirements.* (1) Except as provided in paragraph (d)(2) of this section, the family must demonstrate that one or more adult members of the family who will own the home at commencement of homeownership assistance:

(i) Is currently employed on a full-time basis (the term ''full-time employment'' means not less than an average of 30 hours per week); and

(ii) Has been continuously so employed during the year before commencement of homeownership assistance for the family.

(2) The PHA shall have discretion to determine whether and to what extent interruptions are considered to break continuity of employment during the year. The PHA may count successive employment during the year. The PHA may count self-employment in a business.

(3) The employment requirement does not apply to an elderly family or a disabled family (see the definitions of these terms at § 5.403(b) of this title). Furthermore, if a family, other than an elderly family or a disabled family, includes a person with disabilities, the PHA shall grant an exemption from the employment requirement if the PHA determines that an exemption is needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with part 8 of this title.

(4) A PHA may not establish an employment requirement in addition to the employment standard established by this paragraph.

(e) *Prohibition against mortgage defaults.* The PHA shall not commence homeownership assistance for a family if any family member has previously received assistance under the homeownership option, and has defaulted on a mortgage securing debt incurred to purchase the home.

§ 982.628 Homeownership option: Eligible units.

(a) *Initial requirements applicable to the unit.* The PHA must determine that the unit satisfies all of the following requirements:

(1) The unit is eligible. (See § 982.352. Paragraphs (a)(6), (a)(7) and (b) of § 982.352 do not apply.)

(2) The unit was either under construction or already existing at the time the PHA determined that the family was eligible for homeownership assistance to purchase the unit.

(3) The unit is either a one unit property or a single dwelling unit in a cooperative or condominium.

(4) The unit has been inspected by a PHA inspector and by an independent inspector designated by the family (see § 982.631).

(5) The unit satisfies the HQS (see § 982.401 and § 982.631).

(b) *PHA disapproval of seller.* The PHA may not commence homeownership assistance for occupancy of a home if the PHA has been informed (by HUD or otherwise) that the seller of the home is debarred, suspended, or subject to a limited denial of participation under part 24 of this title.

§ 982.629 Homeownership option: Additional PHA requirements for family search and purchase.

(a) The PHA may establish the maximum time for a family to locate a home, and to purchase the home.

(b) The PHA may require periodic family reports on the family's progress in finding and purchasing a home.

(c) If the family is unable to purchase a home within the maximum time established by the PHA, the PHA may issue the family a voucher to lease a unit or place the family's name on the waiting list for a voucher.

§ 982.630 Homeownership option: Homeownership counseling.

(a) Before commencement of homeownership assistance for a family, the family must attend and satisfactorily complete the pre-assistance homeownership and housing counseling program required by the PHA (pre-assistance counseling).

(b) Suggested topics for the PHA-required pre-assistance counseling program include:

(1) Home maintenance (including care of the grounds);

(2) Budgeting and money management;

(3) Credit counseling;

(4) How to negotiate the purchase price of a home;

(5) How to obtain homeownership financing and loan preapprovals, including a description of types of financing that may be available, and the pros and cons of different types of financing;

(6) How to find a home, including information about homeownership opportunities, schools, and transportation in the PHA jurisdiction;

(7) Advantages of purchasing a home in an area that does not have a high concentration of low-income families and how to locate homes in such areas;

(8) Information on fair housing, including fair housing lending and local fair housing enforcement agencies; and

(9) Information about the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*) (RESPA), state and Federal truth-in-lending laws, and how to identify and avoid loans with oppressive terms and conditions.

(c) The PHA may adapt the subjects covered in pre-assistance counseling (as listed in paragraph (b) of this section) to local circumstances and the needs of individual families.

(d) The PHA may also offer additional counseling after commencement of homeownership assistance (ongoing counseling). If the PHA offers a program of ongoing counseling for participants in the homeownership option, the PHA shall have discretion to determine whether the family is required to participate in the ongoing counseling.

(e) If the PHA is not using a HUD-approved housing counseling agency to provide the counseling for families participating in the homeownership option, the PHA should ensure that its counseling program is consistent with the homeownership counseling provided under HUD's Housing Counseling program.

§ 982.631 Homeownership option: Home inspections and contract of sale.

(a) *HQS inspection by PHA.* The PHA may not commence homeownership assistance for a family until the PHA has inspected the unit and has determined that the unit passes HQS.

(b) *Independent inspection.* (1) The unit must also be inspected by an independent professional inspector selected by and paid by the family.

(2) The independent inspection must cover major building systems and components, including foundation and structure, housing interior and exterior, and the roofing, plumbing, electrical, and heating systems. The independent inspector must be qualified to report on property conditions, including major building systems and components.

(3) The PHA may not require the family to use an independent inspector selected by the PHA. The independent inspector may not be a PHA employee or contractor, or other person under control of the PHA. However, the PHA may establish standards for qualification of inspectors selected by families under the homeownership option.

(4) The independent inspector must provide a copy of the inspection report both to the family and to the PHA. The PHA may not commence homeownership assistance for the family until the PHA has reviewed the inspection report of the independent inspector. Even if the unit otherwise complies with the HQS (and may qualify for assistance under the PHA's tenant-based rental voucher program), the PHA shall have discretion to disapprove the unit for assistance under the homeownership option because of information in the inspection report.

(c) *Contract of sale.* (1) Before commencement of homeownership assistance, a member or members of the family must enter into a contract of sale with the seller of the unit to be acquired by the family. The family must give the PHA a copy of the contract of sale (see also § 982.627(a)(7)).

(2) The contract of sale must:

(i) Specify the price and other terms of sale by the seller to the purchaser.

(ii) Provide that the purchaser will arrange for a pre-purchase inspection of the dwelling unit by an independent inspector selected by the purchaser.

(iii) Provide that the purchaser is not obligated to purchase the unit unless the inspection is satisfactory to the purchaser.

(iv) Provide that the purchaser is not obligated to pay for any necessary repairs.

(v) Contain a certification from the seller that the seller has not been debarred, suspended, or subject to a limited denial of participation under part 24 of this title.

§ 982.632 Homeownership option: Financing purchase of home; affordability of purchase.

(a) The PHA may establish requirements for financing purchase of a home to be assisted under the homeownership option. Such PHA requirements may include requirements concerning qualification of lenders (for example, prohibition of seller financing or case-by-case approval of seller financing), or concerning terms of financing (for example, a prohibition of balloon payment mortgages, or establishment of a minimum homeowner equity requirement from personal resources).

(b) If the purchase of the home is financed with FHA mortgage insurance, such financing is subject to FHA mortgage insurance requirements.

(c) The PHA may establish requirements or other restrictions concerning debt secured by the home.

(d) The PHA may review lender qualifications and the loan terms before authorizing homeownership assistance. The PHA may disapprove proposed financing, refinancing or other debt if the PHA determines that the debt is unaffordable, or if the PHA determines that the lender or the loan terms do not meet PHA qualifications. In making this determination, the PHA may take into account other family expenses, such as child care, unreimbursed medical expenses, homeownership expenses, and other family expenses as determined by the PHA.

(e) All PHA financing or affordability requirements must be described in the PHA administrative plan.

§ 982.633 Homeownership option: Continued assistance requirements; Family obligations.

(a) *Occupancy of home.* Homeownership assistance may only be paid while the family is residing in the home. If the family moves out of the home, the PHA may not continue homeownership assistance after the month when the family moves out. The family or lender is not required to refund to the PHA the homeownership assistance for the month when the family moves out.

(b) *Family obligations.* The family must comply with the following obligations.

(1) *Ongoing counseling.* To the extent required by the PHA, the family must attend and complete ongoing homeownership and housing counseling.

(2) *Compliance with mortgage.* The family must comply with the terms of any mortgage securing debt incurred to purchase the home (or any refinancing of such debt).

(3) *Prohibition against conveyance or transfer of home.* (i) So long as the family is receiving homeownership assistance, use and occupancy of the home is subject to § 982.551(h) and (i).

(ii) The family may grant a mortgage on the home for debt incurred to finance purchase of the home or any refinancing of such debt.

(iii) Upon death of a family member who holds, in whole or in part, title to the home or ownership of cooperative membership shares for the home, homeownership assistance may continue pending settlement of the decedent's estate, notwithstanding transfer of title by operation of law to the decedent's executor or legal representative, so long as the home is solely occupied by remaining family members in accordance with § 982.551(h).

(4) *Supplying required information.* (i) The family must supply required information to the PHA in accordance with § 982.551(b).

(ii) In addition to other required information, the family must supply any information as required by the PHA or HUD concerning:

(A) Any mortgage or other debt incurred to purchase the home, and any refinancing of such debt (including information needed to determine whether the family has defaulted on the debt, and the nature of any such default), and information on any satisfaction or payment of the mortgage debt;

(B) Any sale or other transfer of any interest in the home; or

(C) The family's homeownership expenses.

(5) *Notice of move-out.* The family must notify the PHA before the family moves out of the home.

(6) *Notice of mortgage default.* The family must notify the PHA if the family defaults on a mortgage securing any debt incurred to purchase the home.

(7) *Prohibition on ownership interest on second residence.* During the time the family receives homeownership assistance under this subpart, no family member may have any ownership interest in any other residential property.

(8) *Additional PHA requirements.* The PHA may establish additional requirements for continuation of homeownership assistance for the family (for example, a requirement for post-purchase homeownership counseling or for periodic unit inspections while the family is receiving homeownership assistance). The family must comply with any such requirements.

(9) *Other family obligations.* The family must comply with the obligations of a participant family described in § 982.551. However, the following

provisions do not apply to assistance under the homeownership option: § 982.551(c), (d), (e), (f), (g) and (j).

(c) *Statement of homeowner obligations.* Before commencement of homeownership assistance, the family must execute a statement of family obligations in the form prescribed by HUD. In the statement, the family agrees to comply with all family obligations under the homeownership option.

§ 982.634 Homeownership option: Maximum term of homeownership assistance.

(a) *Maximum term of assistance.* Except in the case of a family that qualifies as an elderly or disabled family (see paragraph (c) of this section), the family members described in paragraph (b) of this section shall not receive homeownership assistance for more than:

(1) Fifteen years, if the initial mortgage incurred to finance purchase of the home has a term of 20 years or longer; or

(2) Ten years, in all other cases.

(b) *Applicability of maximum term.* The maximum term described in paragraph (a) of this section applies to any member of the family who:

(1) Has an ownership interest in the unit during the time that homeownership payments are made; or

(2) Is the spouse of any member of the household who has an ownership interest in the unit during the time homeownership payments are made.

(c) *Exception for elderly and disabled families.* (1) As noted in paragraph (a) of this section, the maximum term of assistance does not apply to elderly and disabled families.

(2) In the case of an elderly family, the exception only applies if the family qualifies as an elderly family at the start of homeownership assistance. In the case of a disabled family, the exception applies if at any time during receipt of homeownership assistance the family qualifies as a disabled family.

(3) If, during the course of homeownership assistance, the family ceases to qualify as a disabled or elderly family, the maximum term becomes applicable from the date homeownership assistance commenced. However, such a family must be provided at least 6 months of homeownership assistance after the maximum term becomes applicable (provided the family is otherwise eligible to receive homeownership assistance in accordance with this part).

(d) *Assistance for different homes or PHAs.* If the family has received such assistance for different homes, or from different PHAs, the total of such assistance terms is subject to the maximum term described in paragraph (a) of this section.

§ 982.635 Homeownership option: Amount and distribution of monthly homeownership assistance payment.

(a) *Amount of monthly homeownership assistance payment.* While the family is residing in the home, the PHA shall pay a monthly homeownership assistance payment on behalf of the family that is equal to the *lower of:*

(1) The payment standard minus the total tenant payment; or

(2) The family's monthly homeownership expenses minus the total tenant payment.

(b) *Payment standard for family.* (1) The payment standard for a family is the lower of:

(i) The payment standard for the family unit size; or

(ii) The payment standard for the size of the home.

(2) If the home is located in an exception payment standard area, the PHA must use the appropriate payment standard for the exception payment standard area.

(3) The payment standard for a family is the greater of:

(i) The payment standard (as determined in accordance with paragraphs (b)(1) and (b)(2) of this section) at the commencement of homeownership assistance for occupancy of the home; or

(ii) The payment standard (as determined in accordance with paragraphs (b)(1) and (b)(2) of this section) at the most recent regular reexamination of family income and composition since the commencement of homeownership assistance for occupancy of the home.

(4) The PHA must use the same payment standard schedule, payment standard amounts, and subsidy standards pursuant to §§ 982.402 and 982.503 for the homeownership option as for the rental voucher program.

(c) *Determination of homeownership expenses.* (1) The PHA shall adopt policies for determining the amount of homeownership expenses to be allowed by the PHA in accordance with HUD requirements.

(2) Homeownership expenses for a homeowner (other than a cooperative member) may only include amounts allowed by the PHA to cover:

(i) Principal and interest on initial mortgage debt, any refinancing of such debt, and any mortgage insurance premium incurred to finance purchase of the home;

(ii) Real estate taxes and public assessments on the home;

(iii) Home insurance;

(iv) The PHA allowance for maintenance expenses;

(v) The PHA allowance for costs of major repairs and replacements;

(vi) The PHA utility allowance for the home; and

(vii) Principal and interest on mortgage debt incurred to finance costs for major repairs, replacements or improvements for the home. If a member of the family is a person with disabilities, such debt may include debt incurred by the family to finance costs needed to make the home accessible for such person, if the PHA determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person, in accordance with part 8 of this title.

(3) Homeownership expenses for a cooperative member may only include amounts allowed by the PHA to cover:

(i) The cooperative charge under the cooperative occupancy agreement including payment for real estate taxes and public assessments on the home;

(ii) Principal and interest on initial debt incurred to finance purchase of cooperative membership shares and any refinancing of such debt;

(iii) Home insurance;

(iv) The PHA allowance for maintenance expenses;

(v) The PHA allowance for costs of major repairs and replacements;

(vi) The PHA utility allowance for the home; and

(vii) Principal and interest on debt incurred to finance major repairs, replacements or improvements for the home. If a member of the family is a person with disabilities, such debt may include debt incurred by the family to finance costs needed to make the home accessible for such person, if the PHA determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person, in accordance with part 8 of this title.

(4) If the home is a cooperative or condominium unit, homeownership expenses may also include cooperative or condominium operating charges or maintenance fees assessed by the condominium or cooperative homeowner association.

(d) *Payment to lender or family.* The PHA must pay homeownership assistance payments either:

(1) Directly to the family or;

(2) At the discretion of the PHA, to a lender on behalf of the family. If the assistance payment exceeds the amount due to the lender, the PHA must pay the excess directly to the family.

(e) *Automatic termination of homeownership assistance.* Homeownership assistance for a family terminates automatically 180 calendar days after the last housing assistance payment on behalf of the family. However, a PHA has the discretion to grant relief from this requirement in those cases where automatic termination would result in extreme hardship for the family.

§ 982.636 Homeownership option: Portability.

(a) *General.* A family may qualify to move outside the initial PHA jurisdiction with continued homeownership assistance under the voucher program in accordance with this section.

(b) *Portability of homeownership assistance.* Subject to § 982.353(b) and (c), § 982.552, and § 982.553, a family determined eligible for homeownership assistance by the initial PHA may purchase a unit outside of the initial PHA's jurisdiction, if the receiving PHA is administering a voucher homeownership program and is accepting new homeownership families.

(c) *Applicability of Housing Choice Voucher program portability procedures.* In general, the portability procedures described in §§ 982.353 and 982.355 apply to the homeownership option and the administrative responsibilities of the initial and receiving PHA are not altered except that some administrative functions (e.g, issuance of a voucher or execution of a tenancy addendum) do not apply to the homeownership option.

(d) *Family and PHA responsibilities.* The family must attend the briefing and counseling sessions required by the receiving PHA. The receiving PHA will determine whether the financing for, and the physical condition of the unit, are acceptable. The receiving PHA must promptly notify the initial PHA if the family has purchased an eligible unit under the program, or if the family is unable to purchase a home within the maximum time established by the PHA.

(e) *Continued assistance under § 982.637.* Such continued assistance under portability procedures is subject to § 982.637.

§ 982.637 Homeownership option: Move with continued tenant-based assistance.

(a) *Move to new unit.* (1) A family receiving homeownership assistance may move to a new unit with continued tenant-based assistance in accordance with this section. The family may move either with voucher rental assistance (in accordance with rental assistance program requirements) or with voucher homeownership assistance (in accordance with homeownership option program requirements).

(2) The PHA may not commence continued tenant-based assistance for occupancy of the new unit so long as any family member owns any title or other interest in the prior home.

(3) The PHA may establish policies that prohibit more than one move by the family during any one year period.

(b) *Requirements for continuation of homeownership assistance.* The PHA must determine that all initial requirements listed in § 982.626 have been satisfied if a family that has received homeownership assistance wants to move to a new unit with continued homeownership assistance. However, the following requirements do not apply:

(1) The requirement for pre-assistance counseling (§ 982.630) is not applicable. However, the PHA may require that the family complete additional counseling (before or after moving to a new unit with continued assistance under the homeownership option).

(2) The requirement that a family must be a first-time homeowner (§ 982.627) is not applicable.

(c) *When PHA may deny permission to move with continued assistance.* The PHA may deny permission to move to a new unit with continued voucher assistance as follows:

(1) *Lack of funding to provide continued assistance.* The PHA may deny permission to move with continued rental or homeownership assistance if the PHA determines that it does not have sufficient funding to provide continued assistance.

(2) *Termination or denial of assistance under § 982.638.* At any time, the PHA may deny permission to move with continued rental or homeownership assistance in accordance with § 982.638.

§ 982.638 Homeownership option: Denial or termination of assistance for family.

(a) *General.* The PHA shall terminate homeownership assistance for the family, and shall deny voucher rental assistance for the family, in accordance with this section.

(b) *Denial or termination of assistance under basic voucher program.* At any time, the PHA may deny or terminate homeownership assistance in accordance with § 982.552 (Grounds for denial or termination of assistance) or § 982.553 (Crime by family members).

(c) *Failure to comply with family obligations.* The PHA may deny or terminate assistance for violation of participant obligations described in § 982.551 or § 982.633.

(d) *Mortgage default.* The PHA must terminate voucher homeownership assistance for any member of family receiving homeownership assistance that is dispossessed from the home pursuant to a judgment or order of foreclosure on any mortgage (whether FHA-insured or non-FHA) securing debt incurred to purchase the home, or any refinancing of such debt. The PHA, in its discretion, may permit the family to move to a new unit with continued voucher rental assistance. However, the PHA must deny such permission, if:

(1) The family defaulted on an FHA-insured mortgage; and

(2) The family fails to demonstrate that:

(i) The family has conveyed title to the home, as required by HUD, to HUD or HUD's designee; and

(ii) The family has moved from the home within the period established or approved by HUD.

§ 982.639 Homeownership option: Administrative fees.

The ongoing administrative fee described in § 982.152(b) is paid to the PHA for each month that homeownership assistance is paid by the PHA on behalf of the family.

§ 982.640 Homeownership option: Recapture of homeownership assistance.

(a) *General.* The PHA shall recapture a percentage of the homeownership assistance provided to the family upon the family's sale or refinancing of the home.

(b) *Securing the PHA's right of recapture.* Upon purchase of the home, a family receiving homeownership assistance shall execute documentation as required by HUD, and consistent with State and local law, that secures the PHA's right to recapture the homeownership assistance in accordance with this section. The lien securing the recapture of homeownership subsidy may be subordinated to a refinanced mortgage.

(c) *Recapture amount for sales.* In the case of the sale of the home, the recapture shall be in an amount equalling the lesser of:

(1) The amount of homeownership assistance provided to the family, adjusted as described in paragraph (f) of this section; or

(2) The difference between the sales price and purchase price of the home, minus:

(i) The costs of any capital expenditures;

(ii) The costs incurred by the family in the sale of the home (such as sales commission and closing costs);

(iii) The amount of the difference between the sales price and purchase

price that is being used, upon sale, towards the purchase of a new home under the Section 8 homeownership option; and

(iv) Any amounts that have been previously recaptured, in accordance with this section.

(d) *Recapture amount for refinancing.* In the case of a refinancing of the home, the recapture shall be in an amount equalling the lesser of:

(1) The amount of homeownership assistance provided to the family, adjusted as described in paragraph (f) of this section; or

(2) The difference between the current mortgage debt and the new mortgage debt; minus:

(i) The costs of any capital expenditures;

(ii) The costs incurred by the family in the refinancing of the home (such as closing costs); and

(iii) Any amounts that have been previously recaptured as a result of refinancing.

(e) *Use of sales price in determining recapture amount.* The recapture amount shall be determined using the actual sales price of the home, unless the sale is to an identity-of-interest entity. In the case of identity-of-interest transactions, the PHA shall establish a sales price based on fair market value.

(f) *Automatic reduction of recapture amount.* The amount of homeownership assistance subject to recapture will automatically be reduced over a 10 year period, beginning one year from the purchase date, in annual increments of 10 percent. At the end of the 10 year period, the amount of homeownership assistance subject to recapture will be zero.

§ 982.641 Homeownership option: Applicability of other requirements.

(a) *General.* The following types of provisions (located in other subparts of this part) do not apply to assistance under the homeownership option:

(1) Any provisions concerning the Section 8 owner or the HAP contract between the PHA and owner;

(2) Any provisions concerning the assisted tenancy or the lease between the family and the owner;

(3) Any provisions concerning PHA approval of the assisted tenancy;

(4) Any provisions concerning rent to owner or reasonable rent; and

(5) Any provisions concerning the issuance or term of voucher.

(b) *Subpart G requirements.* The following provisions of subpart G of this part do not apply to assistance under the homeownership option:

(1) Section 982.302 (Issuance of voucher; Requesting PHA approval of assisted tenancy);

(2) Section 982.303 (Term of voucher);

(3) Section 982.305 (PHA approval of assisted tenancy);

(4) Section 982.306 (PHA disapproval of owner);

(5) Section 982.307 (Tenant screening);

(6) Section 982.308 (Lease and tenancy);

(7) Section 982.309 (Term of assisted tenancy);

(8) Section 982.310 (Owner termination of tenancy);

(9) Section 982.311 (When assistance is paid) (except that § 982.311(c)(3) is applicable to assistance under the homeownership option);

(10) Section 982.313 (Security deposit: Amounts owed by tenant); and

(11) Section 982.314 (Move with continued tenant-based assistance).

(c) *Subpart H requirements.* The following provisions of subpart H of this part do not apply to assistance under the homeownership option:

(1) Section 982.352(a)(6) (Prohibition of owner-occupied assisted unit);

(2) Section 982.352(b) (PHA-owned housing); and

(3) Those provisions of § 982.353(b)(1),(2), and (3) (Where family can lease a unit with tenant-based assistance) and § 982.355 (Portability: Administration by receiving PHA) that are inapplicable per § 982.636;

(d) *Subpart I requirements.* The following provisions of subpart I of this part do not apply to assistance under the homeownership option:

(1) Section 982.403 (Terminating HAP contract when unit is too small);

(2) Section 982.404 (Maintenance: Owner and family responsibility; PHA remedies); and

(3) Section 982.405 (PHA initial and periodic unit inspection).

(e) *Subpart J requirements.* The requirements of subpart J of this part (Housing Assistance Payments Contract and Owner Responsibility) (§§ 982.451–456) do not apply to assistance under the homeownership option.

(f) *Subpart K requirements.* Except for those sections listed below, the requirements of subpart K of this part (Rent and Housing Assistance Payment) (§§ 982.501–521) do not apply to assistance under the homeownership option:

(1) Section 982.503 (Voucher tenancy: Payment standard amount and schedule);

(2) Section 982.516 (Family income and composition: Regular and interim reexaminations); and

(3) Section 982.517 (Utility allowance schedule).

(g) *Subpart L requirements.* The following provisions of subpart L of this part do not apply to assistance under the homeownership option:

(1) Section 982.551(c) (HQS breach caused by family);

(2) Section 982.551(d) (Allowing PHA inspection);

(3) Section 982.551(e) (Violation of lease);

(4) Section 982.551(g) (Owner eviction notice); and

(5) Section 982.551(j) (Interest in unit).

(h) *Subpart M requirements.* The following provisions of subpart M of this part do not apply to assistance under the homeownership option:

(1) Sections 982.602–982.619; and

(2) Sections 982.622–982.624.

Dated: August 24, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

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H.R. 3519/P.L. 106–264

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