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Presidential Documents

Title 3—

The President

Proclamation 7369 of October 24, 2000

United Nations Day, 2000

By the President of the United States of America

A Proclamation

Fifty-five years ago, the United States played a leading role in founding the United Nations, and the treaty creating the U.N. was signed in San Francisco. Today, we are proud to serve as host country for the United Nations, whose headquarters in New York City stands as an enduring symbol of the promise of international peace and cooperation.

The United States remains fully committed to the principles of the United Nations Charter, and we support efforts to make the U.N. a more effective tool to meet the challenges of our changing world. Many of those challenges—poverty, disease, ethnic violence, and regional conflict—recognize no borders and can only be addressed by nations working together with shared resources and common goals. The United Nations is uniquely positioned to facilitate such collaborative efforts.

Today, more than half the world's people live under governments of their own choosing, an achievement that reflects the role the U.N. has played as a steadfast peacemaker and staunch advocate of international human rights. But three- fourths of those people live in developing countries, and more than a billion of them live in abject poverty. Through agencies such as the World Bank and the International Monetary Fund, the U.N. is working to address this gap between the world's richest and poorest countries by supporting comprehensive debt relief and providing billions of dollars in loans and grants to developing nations for projects that promote health, nutrition, education, entrepreneurship, and civil society.

While the devastating world wars of the 20th century are now a part of history, ethnic and regional conflicts continue to threaten global stability and contribute to human misery. Millions of innocent people have lost their lives in such conflicts, and millions of families have been driven from their homelands to seek refuge in neighboring nations. Through its international diplomacy efforts, peacekeeping operations, and humanitarian assistance, the United Nations serves as a beacon of hope for countries torn apart by ethnic, religious, or regional strife.

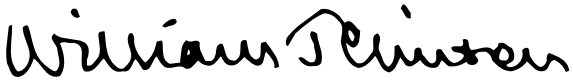
In September of this year, the leaders of 189 countries came together in New York at the United Nations Millennium Summit. This unprecedented gathering of international leaders reaffirmed that the importance of the U.N.'s mission is undiminished after more than 5 decades of extraordinary challenge and global change.

As we observe United Nations Day this year, let us celebrate the spirit of international cooperation and dedication to peace enshrined in the U.N. Charter. For 55 years, the United Nations has led the world in addressing international security problems and promoting human rights and human dignity. Today we reaffirm our commitment to this vital institution and pledge to work with other member nations to ensure that the U.N. is equipped with the resources it needs to remain a powerful instrument of the international community and an effective force for the common good.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution

and laws of the United States, do hereby proclaim October 24, 2000, as United Nations Day. I encourage all Americans to educate themselves about the activities and accomplishments of the United Nations and to observe this day with appropriate ceremonies, programs, and activities devoted to enhancing international cooperation.

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



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Rules and Regulations

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AJ21

Prevailing Rate Systems; Miscellaneous Changes in Certain Federal Wage System Wage Areas

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to add Jefferson County, Washington, as an area of application to the Kitsap, WA, nonappropriated fund (NAF) Federal Wage System (FWS) wage area. We are also renaming the Champaign-Urbana, IL, FWS wage area as the Central Illinois FWS wage area; updating the name of White Sands Proving Grounds in the El Paso, TX, and Albuquerque, NM, wage area listings to White Sands Missile Range; and correcting a typographical error in the wage area listing for the Southern Colorado wage area.

DATES: *Effective Date:* This regulation is effective on November 27, 2000.

FOR FURTHER INFORMATION CONTACT: Chenty I. Carpenter by phone at (202) 606–2838, by FAX at (202) 606–4264, or by e-mail at *cicarpen@opm.gov.*

SUPPLEMENTARY INFORMATION: On August 9, 2000, the Office of Personnel Management (OPM) published an interim rule (65 FR 48641) to add Jefferson County, Washington, as an area of application to the Kitsap, WA, nonappropriated fund (NAF) wage area and to make miscellaneous changes in certain Federal wage system wage areas. The interim rule had a 30-day period for public comment, during which we received no comments.

Jefferson County

The Naval Ordnance Center, Pacific Division, Detachment Port Hadlock, now has a small club in Jefferson County. The club employs two NAF FWS employees. Under section 532.219 of title 5, Code of Federal Regulations, each NAF wage area ''shall consist of one or more survey areas, along with nonsurvey areas, having nonappropriated fund employees.'' The Kitsap wage area consisted of one survey county, Kitsap County, and one area of application county, Clallam County, WA.

OPM considers the following regulatory criteria under 5 CFR 532.219 when defining FWS wage area boundaries:

(i) Proximity of largest activity in each county;

(ii) Transportation facilities and commuting patterns; and

(iii) Similarities of the counties in:

(A) Overall population;

(B) Private employment in major industry categories; and

(C) Kinds and sizes of private industrial establishments.

Jefferson County cannot be defined as a separate NAF wage area because the county does not meet the regulatory criteria to be a separate NAF wage area. However, nonsurvey counties can be combined with a survey area to form a wage area. Therefore, we are defining Jefferson County as an area of application to an existing NAF wage area.

The Naval Submarine Base, Bangor, in the Kitsap survey area, is the closest major Federal installation to Port Hadlock. It is approximately 53 km (33 miles) from Port Hadlock. Commuting patterns data for Jefferson County indicate that 6 percent of the county's resident workforce commutes to work in the Kitsap survey area. Transportation facilities consist of major interstates and highways. Residents of Jefferson County who commute into Pierce and Snohomish Counties must use a ferry or drive around Puget Sound to reach either of these counties. A review of employment and kinds and sizes of industrial establishments shows that Jefferson County is closely similar to the Kitsap survey area.

The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee that advises OPM on FWS pay matters, reviewed and concurred by consensus with this change.

Miscellaneous Changes

FPRAC also reviewed the Champaign-Urbana, IL, FWS wage area and determined that the wage area's counties are properly defined under the regulatory criteria for defining FWS wage areas. However, the Committee agreed by consensus to recommend that OPM rename the wage area as the Central Illinois FWS wage area because this name better describes the boundaries of the wage area. FPRAC reviewed the El Paso FWS wage area and determined that the wage area's counties are also properly defined. The Committee agreed by consensus to recommend that OPM update the name of White Sands Proving Grounds because the Department of Defense now refers to it as White Sands Missile Range. White Sands Proving Grounds was listed under the El Paso and Albuquerque wage areas; therefore, we have updated the name in the listing for both wage areas.

On May 5, 2000, we published a final rule (65 FR 26199) that redefined certain counties in the Southern Colorado and Denver, CO, FWS wage areas. FPRAC agreed to redefine Pitkin County, CO, from the Southern Colorado wage area to the Denver wage area. Because of a typographical error, Pitkin County appeared under both wage area listings in appendix C of subpart B of part 532 of title 5, Code of Federal Regulations. We should have removed Pitkin County from the Southern Colorado wage area listing in the final rule. This final rule corrects the previous final rule and reflects FPRAC's recommendation for the county.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 532

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

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule (65 FR 48641) amending 5 CFR part 532 published on August 9, 2000, is adopted as final with no changes.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–27514 Filed 10–26–00; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV00–920–3 FIR]

Kiwifruit Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which decreased the assessment rate established for the Kiwifruit Administrative Committee (Committee) for the 2000–2001 and subsequent fiscal periods from $0.05 to $0.03 per 22-pound volume fill container or equivalent of kiwifruit. The Committee locally administers the marketing order which regulates the handling of kiwifruit grown in California. Authorization to assess kiwifruit handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: November 27, 2000.

FOR FURTHER INFORMATION CONTACT: Rose M. 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, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the ''order.'' The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California kiwifruit handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable kiwifruit beginning August 1, 2000, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule continues to decrease the assessment rate established for the Committee for the 2000–2001 and subsequent fiscal periods from $0.05 to $0.03 per 22-pound volume fill container or equivalent of kiwifruit.

The California kiwifruit marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of California kiwifruit. They are familiar with the Committee's needs and the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate.

The assessment is normally formulated and discussed in a public meeting. A public meeting was held on July 11, 2000. Because a Committee quorum (eight Committee representatives) was not present at the meeting, the Committee voted on the budget and assessment rate by telephone on July 13, 2000. Thus, all directly affected persons had an opportunity to participate and provide input.

For the 1998–1999 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

In the telephone conference call on July 13, 2000, the Committee unanimously recommended 2000–2001 expenditures of $81,575 and an assessment rate of $0.03 per 22-pound volume fill container or equivalent of kiwifruit. In comparison, last year's budgeted expenditures were $83,800. The assessment rate of $0.03 is $0.02 lower than the rate previously in effect. The Committee voted to reduce 2000–2001 budgeted expenditures and the assessment rate to lessen the financial burden on California kiwifruit handlers.

The following table compares major budget expenditures recommended by the Committee for the 2000–2001 and 1999–2000 fiscal periods:

Budget expense categories	2000–2001	1999–2000
Administrative Staff & Field Salaries	52,000	56,000
Travel, Food & Lodging	9,500	7,500
Office Costs	12,000	14,000
Vehicle Expense Account	4,000	2,300
Annual Audit	4,075	4,000

The assessment rate recommended by the Committee was derived by considering the amount of funds in the Committee's operating reserve, anticipated expenses, and expected shipments of California kiwifruit. Kiwifruit shipments for the year are estimated at 2,704,545 22-pound volume fill containers or equivalents of kiwifruit, which should provide $81,136 in assessment income at an assessment

rate of $.03 per container, $439 less than the estimated expenses. Income derived from handler assessments, along with $24,000 carry-in from the Committee's operating reserve, will be adequate to meet budgeted expenses and to establish an adequate reserve (estimated to be $23,561 at the end of the 2000–2001 fiscal period). Reserve funds will be kept within 1 fiscal period's expenses, the maximum permitted under § 920.42 of the order.

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

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

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

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

There are approximately 400 producers of kiwifruit in the production area and approximately 56 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

None of the 56 handlers subject to regulation have annual kiwifruit sales of at least $5,000,000, excluding receipts from any other sources. Ten of the 400 producers subject to regulation have annual sales of at least $500,000; and the remaining 390 producers have sales less than $500,000, excluding receipts from any other sources. The majority of California kiwifruit producers and handlers may be classified as small entities.

This rule continues to decrease the assessment rate established for the Committee and collected from handlers for the 2000–2001 and subsequent fiscal periods from $0.05 to $0.03 per 22-pound volume fill container or equivalent. The Committee unanimously recommended 2000–2001 expenditures of $81,575 and an assessment rate of $0.03 per 22-pound volume fill container or equivalent. The assessment rate of $0.03 is $0.02 lower than the previous rate. The quantity of assessable kiwifruit for the 2000–2001 fiscal period is estimated at 2,704,545 22-pound volume fill containers or equivalent. Thus, the $0.03 rate should provide $81,136 in assessment income, $439 less than the estimated expenses.

The estimated assessments of $81,136 combined with the $24,000 from the Committee's operation reserve will allow the Committee to meet its expenses and to establish an adequate reserve (estimated to be $23,561 at the end of the 2000–2001 fiscal period). Reserve funds will be kept within 1 fiscal period's expenses, the maximum permitted under § 920.42 of the order.

The following table compares major budget expenditures recommended by the Committee for the 2000–2001 and 1999–2000 fiscal years:

Budget expense categories	2000–2001	1999–2000
Administrative Staff & Field Salaries	52,000	56,000
Travel, Food & Lodging	9,500	7,500
Office Costs	12,000	14,000
Vehicle Expense Account	4,000	2,300
Annual Audit	4,075	4,000

The Committee reviewed and unanimously recommended 2000–2001 expenditures of $81,575 which includes decreases in administrative staff and field salaries and office costs. The Committee also unanimously recommended lowering the assessment rate from $0.05 to $0.03 to lessen the financial burden on handlers.

Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Finance and Assessment Subcommittee. These groups discussed alternative expenditure levels. The subcommittee looked at maintaining the assessment rate at its current level, but determined that the handler financial burden should be lessened. The assessment rate of $0.03 per 22-pound volume fill container or equivalent of assessable kiwifruit was recommended by the Committee and was derived by considering the funds in the Committee's operating reserve, anticipated expenses, and expected shipments of California kiwifruit.

Kiwifruit shipments for the year are estimated at 2,704,545 22-pound volume fill containers or equivalents of kiwifruit, which should provide $81,136 in assessment income, $439 less than the estimated expenses. Income derived from handler assessments, along with the $24,000 carry-in from the Committee's operating reserve, will be adequate to meet budgeted expenses and to establish an adequate reserve (estimated to be $23,561 at the end of the 2000–2001 fiscal period). Reserve funds will be kept within 1 fiscal period's expenses, the maximum permitted under § 920.42 of the order.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2000–2001 season will be approximately $12.32 per 22-pound volume fill container or equivalent of kiwifruit. Therefore, the estimated assessment revenue for the 2000–2001 fiscal period as a percentage of total grower revenue is estimated at 0.2 percent.

This action continues to decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers.

In addition, the Committee's July 11, 2000, meeting was widely publicized throughout the California kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 11, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

Additionally, all attendees were advised of the conference call to be conducted on July 13, 2000. Finally, interested persons were invited to

submit information on the regulatory and informational impacts of this action on small businesses.

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

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

An interim final rule concerning this action was published in the **Federal Register** on August 14, 2000 (65 FR 49472). Copies of that rule were also mailed or sent via facsimile to all kiwifruit handlers. Finally, the interim final rule was made available through the Internet by the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on October 13, 2000. No comments were received.

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

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

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 920 which was published at 65 FR 49472 on August 14, 2000, is adopted as a final rule without change.

Dated: October 23, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–27618 Filed 10–26–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–03–AD; Amendment 39–11946; AD 2000–21–14]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This AD requires you to perform a one-time inspection for abrasion damage, distortion, and proper clearance of the torque oil-pressure tubes and py pressure pipe, and if necessary, adjust and replace these components. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to correct abrasive damage from rubbing pipes and consequent loss of engine oil.

DATES: This AD becomes effective on December 15, 2000.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of December 15, 2000.

ADDRESSES: You may get the service information referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–03–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Roman T. Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4141; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified the FAA that an unsafe condition may exist on certain Pilatus Model PC–12 and PC–12/45 airplanes. The FOCA reports that 3 airplanes had rubbing pipes, 2 with consequent leakage of engine oil. Inadequate clearance caused these components to touch and rub.

What are the consequences if you do not correct the condition? This condition, if not corrected, could result in loss of propulsion during flight.

Has FAA taken any action to this point? 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 certain Pilatus Models PC–12 and PC–12/45 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 18, 2000 (65 FR 50466). The NPRM proposed to require a one-time inspection of the torque oil-pressure tubes and py pressure pipe; and adjust and replace, if necessary, the torque oil-pressure tubes and py pressure pipe.

Was the public invited to comment? Interested persons were afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

What is FAA's Final Determination on this Issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

- Will not change the meaning of the AD; and
- Will not add any additional burden upon the public than was already proposed.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 108 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. airplane operators
1 workhour × $60 per hour = $60	No part required for the inspection	$60 per airplane	$60 × 108 = $6,480.

We estimate the following costs to accomplish the adjustment and replacement:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. airplane operators
2 workhours × $60 per hour = $120	The manufacturer will provide replacement parts at no charge to the owner/operator of the affected airplanes.	$120 per airplane	$120 × 108 = $12,960.

Regulatory Impact

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

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends Section 39.13 by adding a new AD to read as follows:

2000–21–14 Pilatus Aircraft Ltd.: Amendment 39–11946; Docket No. 2000–CE–03–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models PC–12 and PC–12/45 airplanes, manufacturer serial numbers (MSN) 101 through MSN 301, that:

(1) Are certificated in any category; and

(2) Are equipped with any of the following Pilatus torque oil-pressure tubes and py pressure pipe assemblies:

(i) Pilatus part number (P/N) 577.11.12.105 (or FAA-approved equivalent part number);

(ii) Pratt & Whitney Canada (P&WC) P/N 3119969 (or FAA-approved equivalent part number); and

(iii) Pilatus P/N 577.11.12.104 (or FAA-approved equivalent part number).

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to correct chafing damage and consequent loss of engine oil caused by rubbing pipes. Such damage could result in loss of propulsion during critical phases of flight.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following actions:

Actions	Compliance times	Procedures
(1) Inspect the torque oil-pressure tubes and the py pressure pipe assemblies for abrasion damage and distortion.	Within the next 50 hours time-in-service (TIS) after December 15, 2000 (the effective date of the AD).	Accomplish in accordance with the ACCOMPLISHMENT INSTRUCTIONS—AIRCRAFT paragraph of Pilatus Service Bulletin No. 71–004, dated December 22, 1999.
(2) If there is any abrasion damage or distortion, accomplish the following. (i) Replace the pipes and tubes with the damage or distortion; and (ii) Make sure there is a clearance distance of not less than 0.12 inches (3.0 millimeters), and make any appropriate adjustments.	Before further flight after the inspection	As specified in the above-referenced service information.
(3) If no abrasion damage or distortion is found, make sure there is a clearance distance of not less than 0.12 inches (3.0 millimeters), and make any appropriate adjustments.	Before further flight after the inspection	As specified in the above-referenced service information.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

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

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

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Roman T. Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4141; facsimile: (816) 329–4090.

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

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Pilatus Service Bulletin No. 71–004, dated December 22, 1999. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on December 15, 2000.

Note 2: The subject of this AD is addressed in Swiss AD Number HB 2000–007, dated January 17, 2000.

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

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–27222 Filed 10–26–00; 8:45 am]

BILLING CODE 4910–13–U

OVERSEAS PRIVATE INVESTMENT CORPORATION

22 CFR Part 706

RIN 3420–ZA00

Freedom of Information; Final Rule

AGENCY: Overseas Private Investment Corporation.

ACTION: Final rule.

SUMMARY: This final rule revises the Overseas Private Investment Corporation's (''OPIC,'' or ''the Corporation'') Freedom of Information Act (''FOIA'') regulations by making substantive and administrative changes. These revisions supersede OPIC's current FOIA regulations, located at this Part. The final rule incorporates the FOIA revisions contained in the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104–231) (''EFOIA''), conforms OPIC's regulations to current OPIC FOIA practices, and converts the regulations to a plain English format. The final rule also reflects the disclosure principles established by President Clinton and Attorney General Reno in their FOIA Policy Memorandum of October 4, 1993, and reiterated in Attorney General Reno's September 3, 1999 FOIA Memorandum to the heads of federal departments and agencies. Finally, the final rule adds a notice to OPIC's business submitters concerning access to OPIC records that have been transferred to the legal custody and control of the National Archives of the United States (''National Archives'').

DATES: This rule is effective November 15, 2000.

FOR FURTHER INFORMATION CONTACT: Laura A. Naide, FOIA Director, (202) 336–8426, or Eli H. Landy, FOIA Counsel, (202) 336–8418.

SUPPLEMENTARY INFORMATION: This revision of part 706 incorporates changes to the language and structure of the regulations and adds new provisions to implement the EFOIA. New provisions implementing the amendments are found at § 706.12 (defining ''search'' to include electronic searches), § 706.21 (electronic reading room), § 706.31 (format of disclosure), § 706.32 (timing of responses and expedited processing), and § 706.33 (material withheld). OPIC is already complying with these statutory requirements; this final rule serves as OPIC's formal codification of the applicable law and its practice.

Under the EFOIA, an agency may provide by regulation for multiple ''tracks'' in responding to FOIA requests depending upon the amount of time and work involved in responding to different kinds of requests (''multitrack processing''). OPIC will not implement multitrack processing. Because OPIC receives a limited number of FOIA requests each year and is able to respond to the great majority of them on a timely basis, OPIC does not need to provide separate processing tracks for more complicated versus simpler FOIA requests.

Revisions to OPIC's fee schedule can be found at § 706.34. The duplication charge will remain fifteen cents per page, while the document search and review charges will increase to $16 and $35 per hour, respectively. The amount at or below which OPIC will not charge a fee is set at $15.

This revision also notifies OPIC's business submitters of the requirement that OPIC transfer legal custody and control of certain records to the National Archives pursuant to applicable federal records schedules.

OPIC published a proposed rule at 65 FR 30369, May 11, 2000, and invited interested parties to submit comments. OPIC received one set of comments and made several changes to its proposed rule based on the commentator's suggestions.

OPIC adopted the following suggestions. First, OPIC revised § 706.31(b)(1) to describe more clearly how the Corporation handles FOIA requests that do not reasonably describe the records sought. The commentator stated that OPIC's proposed regulation did not ''adequately guarantee that requesters whose requests need to be clarified will be contacted in a timely and effective manner so that their requests can be processed quickly.'' The final rule specifies in more detail OPIC's procedures for treatment of ambiguous requests.

Second, OPIC modified § 706.34(e) concerning special service charges to clarify that requesters will be provided advance notice of the actual cost of any requested service(s) that OPIC has agreed to provide. OPIC provides special services such as certification of documents and rapid delivery methods as a convenience to its FOIA requesters. FOIA requesters are not required to use special services and may withdraw a request for special services if they do not wish to pay the stated cost.

OPIC considered, but did not adopt the following suggestions. First, OPIC did not adopt the suggestion that the Corporation include in its regulations a provision granting expedited processing to records that are subject to multiple (*i.e.,* five or more) pending FOIA requests. OPIC could establish this discretionary category of ''expedited processing'' under FOIA subsection 5 U.S.C. 552(a)(6)(E)(i)(II), but the Corporation does not believe it would serve a useful purpose to do so. OPIC's FOIA program is flexible enough to accommodate multiple requests and respond to them in a timely manner without giving such requests expedited status.

The commentator was concerned that OPIC's response to multiple requests for

identical records could be delayed if OPIC developed a FOIA backlog and such requests were not granted expedited status. Based on OPIC's experience processing FOIA requests, this concern is unfounded. OPIC does not adhere to a strict first-in, first-out regimen. OPIC begins processing each FOIA request upon receipt and handles each request as quickly as possible based on the complexity of the request. For example, a request for publicly-available information can be processed rapidly, often within one or two business days of receipt. By contrast, a request for confidential or financial information takes longer to process because OPIC must contact the business submitter for comments pursuant to Executive Order 12600 and this Part.

OPIC also notes that most multiple requests for OPIC records are requests for commercial or financial information. Because of the notice requirements described above, it would be extremely difficult to respond to such requests in fewer than 20 business days. Finally, as the commentator noted, OPIC's most recent Annual FOIA Report indicates that OPIC responds to FOIA requests in a timely manner.

Second, OPIC did not adopt the suggestion that the Corporation notify requesters of their right under 5 U.S.C. 552(a)(6)(C) to seek immediate review by a court when the Corporation fails to respond to a FOIA request within twenty business days of receipt. The commentator suggested that OPIC provide such notice in its responses to FOIA requests. For such notification to be meaningful, however, OPIC would have to provide the notice prior to processing the FOIA request. This would place a burden on OPIC's limited FOIA resources and impose a requirement on OPIC that is not found in the FOIA.

Third, OPIC will not modify 1A706.11(c), which states: ''In responding to requests for information, OPIC will consider only those records within its possession or control as of the date of the request.'' The commentator considers this ''date-of-request cut-off,'' to be an inappropriate exclusion of more recently-created responsive records. OPIC will retain its practice of using a date-of-request cut-off because there is no other practical way for the Corporation to process FOIA requests and because this practice is consistent with FOIA case law.

The commentator suggests that OPIC adopt a date-of-processing cut-off. Because OPIC begins processing FOIA requests upon receipt, there is no meaningful distinction for the Corporation between the date of receipt and the date of processing. Further, without a cut-off date, OPIC would never be able to complete its response to a FOIA request for an active matter because new records could be created on a continual basis. In spite of this basic practice, however, the Corporation may make occasional exceptions to the date-of-request cut-off depending upon the circumstances of the request. Any such exception is within OPIC's sole discretion. This determination is consistent with recent FOIA case law. *See, e.g., Public Citizen* v. *Dep't of State*, 100 F.Supp. 2d 10 (D.D.C. 2000).

Finally, OPIC did not adopt the commentator's suggested language regarding referrals of documents to other agencies, although it did amend 1A706.33(b) as described below. The commentator suggested regulatory language that would require OPIC, prior to referring a record to another agency for review and release pursuant to a FOIA request, to identify an intention on the part of the originating agency to retain control over the record. OPIC believes this requirement would create an undue burden on its FOIA program.

To address the commentator's concerns, OPIC amended 1A706.33(b) to state that OPIC will not make a referral if OPIC can make a determination concerning release either by examining the document and/or by informal consultation with the originating agency. OPIC also amended the section to state that any necessary referrals will be made promptly upon OPIC's receipt of the FOIA request. As the commentator noted, OPIC has only made one referral to another agency within the last two years. Accordingly, OPIC does not believe that referrals within its FOIA program have resulted in delays to its FOIA requesters.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the head of OPIC has certified that this regulation, as promulgated, will not have a significant economic impact on a substantial number of small entities. The regulation implements the FOIA, a statute concerning the release of federal records, and does not economically impact Federal Government relations with the private sector. Further, under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Based on OPIC's experience, these fees are nominal.

Executive Order 12866

OPIC incorrectly stated that its proposed rule (65 FR 30369, May 11, 2000) was drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Office of Management and Budget (''OMB''), by memorandum dated October 12, 1993, exempted OPIC from the requirements of this Executive Order. Accordingly, OMB did not review this final rule or its predecessor proposed rule. OPIC did, however, incorporate the general principles stated in section 1(b) of the Executive Order in drafting its proposed and final rules.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This regulation is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This regulation will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 22 CFR Part 706

Freedom of Information.

For the reasons stated in the summary, OPIC revises 22 CFR Part 706 to read as follows:

PART 706—FREEDOM OF INFORMATION

Subpart A—General

Sec.

706.11 General Provisions.
706.12 Definitions.

Subpart B—Procedures for Obtaining Publicly Available Records

706.21 What types of OPIC records are publicly available, and how do I obtain access to or copies of these records?

Subpart C—Procedures for Obtaining Records under the FOIA

706.31 How do I request copies of or access to OPIC records that are not otherwise available to the public?
706.32 When will I receive a response to my FOIA request?
706.33 How will OPIC respond to my FOIA request?

706.34 What, if any, fees will I be charged?
706.35 When will OPIC reduce or waive fees?
706.36 How may I appeal a partial or total denial of records?

Subpart D—Rights of Submitters of Confidential Business Information

706.41 How should business submitters designate business information in materials submitted to OPIC?
706.42 When will OPIC notify business submitters of a pending FOIA request?
706.43 Who will OPIC notify if a FOIA lawsuit is filed?
706.44 What happens to business information contained in OPIC records transferred to the National Archives of the United States?

Authority: 5 U.S.C. 552, as amended; Executive Order 12600; 44 U.S.C. 2901, *et. seq.*

PART 706—FREEDOM OF INFORMATION

Subpart A—General

§ 706.11 General Provisions.

(a) *Purpose.* The purpose of this part is to help interested parties obtain access to OPIC records. Many OPIC records may be accessed by the public without filing a formal request under the FOIA. Records that are not routinely available, however, must be requested under the FOIA. This part also informs OPIC's business submitters of their right to be notified of a request for disclosure of business information and to object to such disclosure. Finally, this part provides information about access to records that OPIC has transferred to the National Archives.

(b) *Policy.* OPIC's policy is to make its records available to the public to the greatest extent possible, in keeping with the spirit of the FOIA. This policy includes providing reasonably segregable information from records that also contain information that may be withheld under the FOIA. However, implementation of this policy also reflects OPIC's view that the soundness and viability of many of its programs depend in large measure upon full and reliable commercial, financial, technical and business information received from applicants for OPIC assistance and that the willingness of those applicants to provide such information depends on OPIC's ability to hold it in confidence. Consequently, except as provided by law and this part, information provided to OPIC in confidence will not be disclosed without the submitter's consent.

(c) *Scope.* This regulation applies to all agency records in OPIC's possession and control. This regulation does not compel OPIC to create records or to ask outside parties to provide documents in order to satisfy a FOIA request. OPIC may, however, in its discretion and in consultation with a FOIA requester, create a new record as a partial or complete response to a FOIA request. In responding to requests for information, OPIC will consider only those records within its possession and control as of the date of the request. This regulation does not apply to requests for records under the Privacy Act, 5 U.S.C. 552a. OPIC's regulations governing Privacy Act requests are located at 22 CFR part 707.

(d) *OPIC Internet Site.* OPIC maintains an Internet site at *www.opic.gov.* This site contains information on OPIC functions, activities, programs, and transactions. OPIC encourages all prospective requesters of information, whether under FOIA or otherwise, to visit its Internet site prior to submitting a request.

(e) *OPIC address.* OPIC is located at 1100 New York Avenue, NW., Washington, DC 20527. All correspondence should be sent to this address.

§ 706.12 Definitions.

For purposes of this subpart, the following definitions apply:

All other requesters—Requesters other than commercial use requesters, educational and non-commercial scientific requesters, or representatives of the news media.

Business information—Trade secrets and confidential or privileged commercial or financial information obtained from any person, including, but not necessarily limited to, information contained in individual case files relating to such activities as insurance, loans, and loan guaranties.

Business submitter—Any person that provides business information to OPIC.

Educational institution—A preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, or an institution of professional or vocational education.

FOIA—The Freedom of Information Act, as amended, 5 U.S.C. 552.

National Archives—The National Archives of the United States.

Non-commercial scientific institution—An institution that is operated for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry, and that is not operated solely for purposes of furthering a business, trade, or profit interest.

OPIC—The Overseas Private Investment Corporation.

Person—An individual, partnership, corporation, association, or organization, other than a federal government agency.

Record—All papers, memoranda, or other documentary material, or copies thereof, regardless of physical form or characteristics, created or received by OPIC and within OPIC's possession and control. ''Record'' does not include publications that are available to the public through the **Federal Register**, by sale or through free distribution.

Redaction—The process of removing non-disclosable material from a record so that the remainder may be released.

Representative of the news media—A person actively gathering information on behalf of an entity organized and operated to publish or broadcast news to the public. Freelance journalists qualify as representatives of the news media when they can demonstrate that a request is reasonably likely to lead to publication.

Request—Any request made to OPIC under the FOIA.

Requester—Any person making a request.

Review—The examination of a record located in response to a request in order to determine whether any portion of the record is exempt from disclosure. Review also includes processing any record for disclosure—for example, redacting and preparing the record for disclosure. Review also includes time spent considering any formal objection to disclosure made by a business submitter, but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

Search—The process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format.

Working days—All calendar days excluding Saturdays, Sundays, Federal Government holidays, and any other day on which OPIC is not open for business.

Subpart B—Procedures for Obtaining Publicly Available Records

§ 706.21 What types of OPIC records are publicly available, and how do I obtain access to or copies of these records?

(a) *Electronic Access.*

(1) Many OPIC records are readily available to the public by electronic access, including OPIC's Annual Report,

OPIC's Program Handbook, OPIC press releases, and application forms for OPIC assistance. Persons seeking information are encouraged to visit OPIC's Internet site at: *www.opic.gov.*

(2) Records relating to OPIC's FOIA program, including records required by the FOIA to be made available electronically, records which have been the subject of frequent FOIA requests, and OPIC's annual FOIA Report are available in OPIC's Electronic Reading Room. OPIC's Electronic Reading Room may be accessed through the ''FOIA'' link on OPIC's Internet site at: *www.opic.gov.* The Electronic Reading Room also contains an index of records available electronically. Generally, only records created after November 1, 1996 are available electronically.

(b) *Offline Access.* Publicly-available OPIC materials are readily available on OPIC's Internet site at *www.opic.gov.* If you do not have access to the Internet, you may obtain many of the same materials by contacting one or more of the sources listed below.

(1) *General information.* General information (*e.g.,* OPIC's Annual Report, OPIC's Program Handbook, and application forms for OPIC assistance) are available from OPIC's Information Officer. To obtain access to or copies of these records, call (202) 336–8400 and ask to be connected with the Information Officer, or write to the Information Officer. You may also obtain general information by calling the OPIC InfoLine at (202) 336–8799 and you may obtain documents by facsimile by calling the OPIC FactsLine at (202) 336–8700.

(2) *Claims information.* OPIC's Department of Legal Affairs maintains public information files relating to the determination of claims filed under OPIC's political risk insurance contracts and a list of all claims resolved by cash settlements or guaranties. To obtain access to or copies of these records, call (202) 336–8400 and ask to be connected with the Claims Assistant in Legal Affairs or write to the Claims Assistant, Department of Legal Affairs.

(3) *Materials concerning OPIC's Board of Directors.* The Corporate Secretary maintains public information files containing the minutes of the public portions of Board of Directors meetings, as well as publicly-releasable Board resolutions. To obtain access to or copies of these records, call (202) 336–8400 and ask to be connected with the Corporate Secretary or write to the Corporate Secretary.

(4) *Press Releases.* OPIC's Press Office maintains copies of OPIC's press releases. To obtain access to or copies of these records, call (202) 336–8400 and ask to be connected with the Press Office or write to the Press Office.

(5) *Reading room material.* Pursuant to the FOIA, OPIC maintains certain records for public inspection and photocopying, including records that have been the subject of frequent FOIA requests. To obtain access to or copies of these records, call (202) 336–8400 and ask to be connected with the FOIA Office or write to the FOIA Office. OPIC maintains an index of FOIA reading room records, which is updated regularly.

Subpart C—Procedures for Obtaining Records Under the FOIA

§ 706.31 How do I request copies of or access to OPIC records that are not otherwise available to the public?

(a) *Submitting a request.* To request records that are not otherwise available to the public, submit a written request to OPIC's FOIA Office either by mail, by hand delivery, by facsimile transmission to (202) 408–0297, or by electronic mail to *FOIA@opic.gov.* You must state that you are requested records under the FOIA. Your request is considered received by OPIC upon actual receipt by OPIC's FOIA Office.

(b) *Format.* Although FOIA requests do not need to follow a specific format, you must include the following information:

(1) You must reasonably describe the records you seek. This means that you must provide enough detail to enable OPIC personnel, using reasonable efforts, to locate the records. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter. Any request that does not reasonably describe the records sought will not be considered received by OPIC until the request is clarified. If your request does not reasonably describe the records you seek, OPIC will make reasonable efforts to contact you and tell you what additional information you need to provide in order to clarify your request. You then will have an opportunity to modify your request to meet the requirements of this section. Any time you spend clarifying your request (discussing your request with OPIC and preparing a revised request) is excluded from the 20 working-day period (or any extension of this period) that OPIC has to respond to your request.

(2) You must state the format (e.g., paper, computer disk, etc.) in which you would like OPIC to provide the requested records. If you do not state a preference, you will receive any released records in the format most convenient to OPIC.

(3) You must include your mailing address and telephone number. You may also provide your electronic mail address, which will allow OPIC to contact you quickly to discuss your request and, in some instances, to respond to your request electronically.

(4) You must state your willingness to pay fees under this Part or, alternately, your willingness to pay fees up to a specified limit. If you believe that you qualify for a partial or total fee waiver under § 706.35(a), you should request a waiver and provide justification as required by § 706.35(b). If your request does not contain a statement of your willingness to pay fees or a request for a fee waiver, OPIC will advise you of the requirements of this paragraph. If you fail to respond within ten working days of such notification, OPIC will stop processing your request.

§ 706.32 When will I receive a response to my FOIA request?

(a) *General.* The FOIA requires OPIC to respond within twenty working days after the date on which OPIC's FOIA Office received the request.

(b) *Order of processing.* Generally, OPIC responds to FOIA requests in the order in which they are received.

(c) *Extensions.*

(1) In unusual circumstances, OPIC may require an extension of time in which to respond to your request. OPIC will provide written notice to you whenever such unusual circumstances exist. Unusual circumstances may include, for example: The need to search for and collect requested records from storage facilities located outside of OPIC's premises; the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are requested in a single request; or the need for consultation with another agency having a substantial interest in the request. If the extension is expected to exceed ten working days, OPIC will offer you the opportunity to:

(i) Alter your request so that processing may be accelerated; or

(ii) Propose an alternative, feasible time frame for processing the request.

(2) When OPIC reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, such requests may be aggregated for purposes of this section.

(d) *Expedited processing.* OPIC will expedite processing of your FOIA

request if you provide information indicating that one of the following factors is present: circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or an urgent need to inform the public about an actual or alleged federal government activity, if the request is made by a person primarily engaged in disseminating information. You may make a request for expedited processing at the time you submit your FOIA request or at any later time. If you make such a request, you must submit a statement, certified to be true and correct to the best of your belief, explaining in detail the basis for requesting expedited processing. OPIC will notify you of its determination concerning your request for expedited processing within ten days after the date of your request. You may appeal a denial of a request for expedited processing under the provisions at § 706.36. OPIC will grant expedited consideration to any such appeal.

§ 706.33 How will OPIC respond to my FOIA request?

(a) *OPIC response.* You will be notified in writing once OPIC makes a determination concerning your request. OPIC will respond by providing the requested records to you in whole or in part and/or by denying your request in whole or in part, or by notifying you that OPIC will produce or withhold, in whole or in part, the requested records. If you owe fees, OPIC will respond to you after you have paid the fees.

(1) *Segregable records.* If OPIC determines that part(s) of a record are exempt from disclosure under the FOIA, any reasonably segregable part of the record will be provided to you after redaction of the exempt material. OPIC will mark or annotate any such record to show both the amount and the location of the redacted information wherever practicable. If segregation would render the record meaningless, OPIC will withhold the entire record.

(2) *Denials.* A denial is a determination to withhold any requested record in whole or in part, a determination that a requested record cannot be located, or a determination that what you requested is not a record subject to the FOIA. If OPIC denies all or part of your request, you will be provided:

(i) The name, title, and signature of the person responsible for the determination;

(ii) The statutory basis for non-disclosure;

(iii) A statement that the denial may be appealed under § 706.36 and a brief description of the requirements of that section; and

(iv) If entire records or pages of records are withheld, an estimated volume of the amount of material withheld unless providing such an estimate would harm an interest protected by the FOIA exemption under which the denial is made.

(b) *Referrals to other government agencies.* If you request a record in OPIC's possession that was created or classified by another Federal agency, OPIC will promptly refer your request to that agency for direct response to you unless OPIC can determine by examining the record or by informal consultation with the originating agency that the record may be released in whole or part. OPIC will notify you of any such referral.

§ 706.34 What, if any, fees will I be charged?

(a) *General Policy.* You generally will be charged for costs incurred by OPIC in complying with your FOIA request, in accordance with paragraph (c) of this section and as required or permitted by law. As explained more fully in paragraph (c) of this section, fees will vary according to your requester status.

(1) Search fees are $16 per hour.

(2) Review fees are $35 per hour.

(3) Duplication costs are $.15 per page for photocopying, and direct costs for all other media (including any operator time involved).

(b) *Anticipated Fees.* Your FOIA request must specifically state that you will pay all fees chargeable under this section or, alternatively, that you will pay fees up to a specified limit. If your request makes no reference to anticipated fees and your request is expected to involve fees of more than $25, or OPIC estimates that the fees will exceed the dollar limit specified in your request, OPIC will promptly notify you of the estimated fees.

(c) *Uniform Fee Schedule.* Fees will be charged according to your requester status.

(1) *Commercial use requesters.* Commercial use requesters will be charged the cost of all time spent searching for and reviewing for release the requested records and for all duplication costs.

(2) *Educational and non-commercial scientific institution requesters.* Educational and non-commercial scientific institution requesters will be charged only the costs of duplication. No fee will be charged for the costs of photocopying the first 100 pages of documents or for the first $15 of other media costs. To be eligible for inclusion in this category, you must show that your request is being made under the auspices of a qualifying educational institution or non-commercial scientific institution and that the records are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(3) *Representatives of the news media.* Representatives of the news media will be charged only the costs of duplication. No fee will be charged for the costs of photocopying the first 100 pages of documents or for the first $15 of other media costs. To be eligible for inclusion in this category, you must be a representative of the news media and your request must not be made for a commercial use. A request for records that supports the news dissemination function of the requester is not considered to be a request that is for a commercial use.

(4) *All other requesters.* All other requesters will be charged for the cost of any search time in excess of two hours, photocopying any documents in excess of 100 pages, and any costs in excess of the first $15 of other media costs.

(d) *Fees for searches that produce no records.* Fees will be charged as provided in this section even if OPIC's search and review does not produce any disclosable records.

(e) *Special services charges.* At its discretion, OPIC may comply with requests for special services such as certification of documents or shipping methods other than regular U.S. mail. You will be charged the direct costs of any such services. OPIC will inform you of the cost of any special service(s) that you request, and you must pay this cost before OPIC will finish processing your FOIA request. If you do not wish to pay the stated cost, you may rescind your request for the special service(s).

(f) *Advance Payments.* Where OPIC estimates that fees are likely to exceed $250, you will be required to make an advance payment of the entire fee before OPIC continues to process your request. You will be provided an opportunity to narrow the scope of your request if you do not want to pay the entire amount of the estimated fees.

(g) *Restrictions on Assessing Fees.* With the exception of commercial use requesters, the FOIA requires agencies to provide the first 100 pages of photocopying and the first two hours of search time to requesters without charge. Moreover, the FOIA prohibits agencies from charging fees to any requester, including commercial use

requesters, if the cost of collecting the fee would be equal to or greater than the fee itself. OPIC has determined that its cost of collecting a FOIA fee is $15. In implementing these provisions, OPIC will not begin to assess fees until after providing the free search and reproduction described above, except for commercial use requesters. For example, for a request involving four hours of search time and results in 105 pages of documents, OPIC will determine the cost of only 2 hours of search time and only five pages of duplication.

(h) *Failure to pay fees.*

(1) OPIC will begin assessing interest charges on the 31st calendar day following the date of billing. Interest will be at the rate prescribed in section 3717 of Title 31 of the United States Code.

(2) If you previously failed to pay a FOIA fee to OPIC in a timely fashion, you must pay the full amount owed plus any applicable interest as provided above and make an advance payment of the full amount of the estimated fee before OPIC will process a new FOIA request from you.

(3) When OPIC acts under paragraphs (h)(1) or (2) of this section, the administrative time limits for processing FOIA requests (*i.e.,* 20 working days from receipt of initial request and 20 working days from receipt of an appeal plus permissible extensions) will begin only after OPIC has received full payment of all applicable fees and interest.

§ 706.35 When will OPIC reduce or waive fees?

(a) *Waiver.* In accordance with the FOIA's fee waiver provisions, OPIC will furnish records to you without charge or at a reduced charge if disclosure of the information you request is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in your commercial interest. In determining whether a fee waiver is appropriate, OPIC will consider the following factors:

(1) Whether the subject of the requested records concerns the operations or activities of the government;

(2) Whether disclosure of the requested information is likely to contribute significantly to public understanding of government operations or activities;

(3) Whether you have the intention and ability to disseminate the information to the public;

(4) Whether the information is already in the public domain;

(5) Whether you have a commercial interest that would be furthered by the disclosure; and, if so,

(6) Whether the magnitude of your identified commercial interest is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in your commercial interest.

(b) *Justification.* In all cases, you have the burden of presenting sufficient evidence or information to justify the requested fee waiver or reduction.

(c) *Inspection.* You may come to OPIC's offices to inspect any releasable records that you requested without charge to you except for any search, review, and/or duplication fees that are otherwise payable.

(d) *Other provisions.*

(1) *Aggregating requests.* When OPIC reasonably believes that a requester or group of requesters is attempting to break down a request into a series of requests for the purpose of evading the assessment of fees, OPIC will aggregate any such requests and charge accordingly.

(2) *Remittances.* All payments under this Part must be in the form of a check or a bank draft denominated in U.S. currency. Checks should be made payable to the order of United States Treasury and mailed to the OPIC FOIA Office.

§ 706.36 How may I appeal a partial or total denial of records?

(a) *Procedure.* If your request for records has been denied in whole or in part, you may file an appeal within twenty working days following the date on which you receive OPIC's denial. Your appeal should be addressed to OPIC's Vice President and General Counsel. Your appeal is considered received by OPIC upon actual receipt by OPIC's Vice President and General Counsel. You should clearly mark your envelope and appeal letter as a ''Freedom of Information Act Appeal.'' Your appeal letter should reasonably describe the information or records requested and any other pertinent facts and statements.

(b) *Response.* OPIC's Vice President and General Counsel or his/her designee will render a written decision within twenty working days after the date of OPIC's receipt of the appeal, unless an extension of up to ten working days is deemed necessary due to unusual circumstances. You will be notified in writing of any extension. If your appeal is denied in whole or in part, the decision will explain OPIC's rationale for upholding the denial. If your appeal is granted in whole or in part, the information or requested records will be made available promptly, provided the requirements of § 706.34 regarding payment of fees are satisfied.

Subpart D—Rights of Submitters of Confidential Business Information

§ 706.41. How should business submitters designate business information in materials submitted to OPIC?

All business submitters may designate, by appropriate markings, either at the time of submission or at a later time, any portions of their submissions that they consider to be protected from disclosure under the FOIA. These markings will be considered by OPIC in responding to a FOIA request but such markings (or the absence of such markings) will not be dispositive as to whether the marked information is ultimately released.

§ 706.42 When will OPIC notify business submitters of a pending FOIA request?

(a) Except as provided in paragraph (e) of this section, OPIC's FOIA Office will promptly notify a business submitter in writing that a request for disclosure has been made for any business information provided by the submitter. This notification will describe the nature and scope of the request, advise the submitter of its right to submit written objections in response to the request, and inform the submitter of OPIC's intent to disclose the business information ten working days from the date of the notice. The notice will either describe the business information requested or include copies of the requested records.

(b) The business submitter may, at any time prior to the disclosure date described in paragraph (a) of this section, submit to OPIC's FOIA Office detailed written objections to the disclosure of the requested information, specifying the grounds upon which it contends that the information should not be disclosed. In setting forth such grounds, the submitter should explain the basis of its belief that the nondisclosure of any item of information requested is mandated or permitted by law. In the case of information that the submitter believes to be exempt from disclosure under subsection (b)(4) of the FOIA, the submitter shall explain why the information is considered a trade secret or commercial or financial information that is privileged or confidential and either: How disclosure of the information would cause substantial competitive harm to the submitter, or why the information should be considered voluntarily submitted and

why it is information that would not customarily be publicly released by the submitter. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(c) The period for providing OPIC with objections to disclosure of information may be extended by OPIC upon receipt of a written request for an extension from the business submitter. Such written request shall set forth the date upon which any objections are expected to be completed and shall provide reasonable justification for the extension. In its discretion, OPIC may permit more than one extension.

(d) OPIC may accept or reject the submitter's objections, in whole or in part. If OPIC rejects the submitter's objections, in whole or in part, OPIC will promptly notify the business submitter of its determination at least five working days prior to release of the information. The notification will include:

(1) A statement of the reasons for OPIC's decision to reject the business submitter's objections;

(2) A description of the information to be disclosed, or a copy thereof; and

(3) A specific disclosure date.

(e) OPIC will not ordinarily notify the business submitter pursuant to paragraph (a) of this section if:

(1) OPIC determines that the FOIA request should be denied;

(2) The disclosure is required by law (other than pursuant to 5 U.S.C. 552); or

(3) The information has been published or otherwise made available to the public, including material described in § 706.21.

§ 706.43 Who will OPIC notify if a FOIA lawsuit is filed?

If a requester files a lawsuit seeking to compel the disclosure of business information, OPIC will promptly notify any business submitter(s) that submitted information at issue in the lawsuit.

§ 706.44 What happens to business information contained in OPIC records transferred to the National Archives of the United States?

Under the Records Disposal Act, 44 U.S.C. Chapter 33, OPIC is required to transfer legal custody and control of records with permanent historical value to the National Archives. OPIC's Finance Project and Insurance Contract Case files generally do not qualify as records with permanent historical value. OPIC will not transfer these files except when the National Archives determines that an individual project or case is especially significant or unique. If the National Archives receives a FOIA request for records that have been transferred it will respond to the request in accordance with its own FOIA regulations.

Dated: October 24, 2000.

Laura A. Naide,

FOIA Director and Senior Administrative Counsel.

[FR Doc. 00–27704 Filed 10–26–00; 8:45 am]

BILLING CODE 3210–01–U

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 884

RIN 0701–AA60

Delivery of Personnel to United States Civilian Authorities for Trial

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is revising 32 CFR Part 884, Delivery of Personnel to United States Civilian Authorities for Trial of the Code of Federal Regulations to reflect current policies. Part 884 is the Air Force Instruction establishing procedures for making Air Force members, civilian personnel, and family members available to U.S. civilian authorities for the trial or specified court appearances. It updates the process for delivery of personnel to civilian authorities for trial.

EFFECTIVE DATE: November 1, 2000.

ADDRESSES: Lt. Col. Tom Jaster, AFLSA/JAJM, 112 Luke Avenue, Suite 343, Bolling Air Force Base, DC 20332–8000, 202–767–1539.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Tom Jaster, AFLSA/JAJM, 202–767–1539.

SUPPLEMENTARY INFORMATION: Part 884 implements Department of Defense (DoD) Directive 5525.9, Compliance of DoD Members, Employees, and Family Members Outside the United States With Court Orders, December 27, 1988 and AFPD 51–10, Making Military Personnel, Employees, and Dependents Available to Civilian Authorities.

List of Subjects in 32 CFR Part 884

Courts, Government employees, Law enforcement, Military personnel.

For the reasons set forth in the preamble, the Department of the Air Force is revising 32 CFR Part 884 as follows:

PART 884—DELIVERY OF PERSONNEL TO UNITED STATES CIVILIAN AUTHORITIES FOR TRIAL

Sec.
884.0 Purpose.
884.1 Authority.
884.2 Assigned responsibilities.
884.3 Placing member under restraint pending delivery.
884.4 Release on bail or recognizance.
884.5 Requests under the interstate agreement on Detainer's Act.
884.6 Requests by Federal authorities for military personnel stationed within the United States and its possessions.
884.7 Requests by state and local authorities when the requested member is located in that state.
884.8 Request for delivery by state authorities when the member is located in a different state.
884.9 Requests for custody of members stationed outside the United States.
884.10 Returning members, employees, and family members from overseas.
884.11 Procedures for return of an Air force member to the United States.
884.12 Delays in returning members to the United States.
884.13 Denials of a request for return of a member to the United States.
884.14 Compliance with court orders by civilian employees and family members.
884.15 Procedures involving a request by Federal or state authorities for custody of an overseas civilian employee or a command-sponsored family member.
884.16 Reporting requests for assistance and action.
884.17 Commander's instruction letter to member.
884.18 Civilian authority's acknowledgment of transfer of custody and agreement to notify member's commander.

Authority: 10 U.S.C. 814; 10 U.S.C. 8013; Sec. 721(a), Pub. L. 100–456, 102 Stat. 2001.

§ 884.0 Purpose.

This part establishes procedures for making Air Force members, civilian personnel, and family members available to U.S. civilian authorities for trial or specified court appearances. It implements 32 CFR part 146. This part does not confer any rights, benefits, privileges, or form of due process procedure upon any individuals.

§ 884.1 Authority.

A general court martial convening authority (GCMCA) may authorize delivery of a member of that command to Federal or state civil authorities. The GCMCA may delegate this authority to an installation or equivalent commander. See AFPD 51–10, Making Military Personnel, Employees, and Dependents Available to Civilian

authorities,[1] paragraphs 8 and 9 for sources of authority.

§ 884.2 Assigned responsibilities.

(a) The Under Secretary of Defense (USD), Personnel & Readiness (P&R), is the denial authority for all requests for return of members to the United States for delivery to civilian authorities when the request falls under § 884.9(e).

(b) The Air Force Judge Advocate General (TJAG) may approve requests that fall under § 884.9(e) or recommend denial of such requests. TJAG or a designee may approve or deny:

(1) Requests for return of members to the United States for delivery to civilian authorities when the request falls under § 884.9(f).

(2) Requests for delays of up to 90 days completing action on requests for return of members to the United States for delivery to civilian authorities.

(c) The Air Force Legal Services Agency's Military Justice Division (HQ AFLSA/JAJM), 172 Luke Avenue, Suite 343, Bolling AFB, DC 20332–5113, processes requests for return of members to the United States for delivery to civilian authorities and notifies requesting authorities of decisions on requests. HQ AFLSA/JAJM completes action on requests within 30 days after receipt of the request, unless a delay is granted; they send all reports and notifications to USD/P&R and to the DoD General Counsel (DoD/GC), as required by this part; and they handle all communications with requesters.

§ 884.3 Placing member under restraint pending delivery.

Continue restraint only as long as is reasonably necessary to deliver the member to civilian authorities. See AFPD 51–10, paragraph 5. To determine whether probable cause exists and whether a reasonable belief exists that restraint is necessary, the commander should refer to the Manual for Courts-Martial (MCM), 1984, specifically, Rules for Courts-Martial (RCM) 305(h)(2)(B), and the discussion following it. The requirement for the formal review of restraint found in MCM 1984, RCM 305, and AFI 51–201, Military Justice Guide,[2] does not apply.

§ 884.4 Release on bail or recognizance.

(a) Before delivering an Air Force member to a civilian authority, the commander or designee directs the member in writing to report to a designated Air Force unit, activity, or recruiting office for further instructions in the event the civilian authority releases the member (see § 884.17). The commander designates the member's unit, if the civilian authority is in the immediate vicinity of the member's base. The commander advises the designated Air Force unit, activity, or recruiting office of the situation. Once the member has been released and has reported to the designated authority, it immediately sends the member's name, rank, Social Security number (SSN). organization, and other pertinent information to the member's commander, who then provides further instructions.

(b) The member's commander notifies the military personnel flight (MPF) of the situation. In turn, the MPF provides an information copy to the Air Force Personnel Center (AFPC) assignment office responsible for the member's Air Force specialty code (AFSC), as listed in AFMAN 36–2105, Officer Classification,[3] or AFMAN 36–2108, Airman Classification.[3] If contact cannot be made with the member's commander, the Air Force unit, activity, or recruiting office previously designated by the commander obtains instructions from HQ AFPC/DPMARS or DPMRPP2.

§ 884.5 Requests under the Interstate agreement on Detainer's Act.

When either the prisoner or state authorities make a request under the Detainer's Act, follow the procedures in Title 18 U.S.C. App. Section 1, *et seq.* The Act applies only to a person who has entered upon a term of imprisonment in a penal or correctional institution and is, therefore inapplicable to members in pretrial confinement.

§ 884.6 Request by Federal authorities for military personnel stationed within the United States and its possessions.

(a) When Federal authorities request the delivery of service members, the Air Force will normally deliver service members when the request is accompanied by a warrant issued pursuant to the Federal Rules of Criminal Procedure, rule 4, or when a properly identified Federal officer represents that such a warrant has been issued.

(b) A U.S. marshal, deputy marshal, or other officer authorized by law will call for and take into custody persons desired by Federal authorities for trial. The officer taking custody must execute a statement in substantially the form set out in § 884.18.

§ 884.7 Requests by state and local authorities when the requested member is located in that state.

(a) The Air Force normally will turn over to the civilian authorities of the state, upon their request. Air Force members charged with an offense against state or local law. Each request by such civilian authorities for the surrender of a member of the Air Force should normally be accompanied by a copy of an indictment, information, or other document used in the state to prefer charges, or a warrant that reflects the charges and is issued by a court of competent jurisdiction.

(b) Before making delivery to civilian authorities of a state, the commander having authority to deliver will obtain a written agreement, substantially in the form of § 884.18, from a duly authorized officer of the state.

(c) Where the state authority cannot agree to one or more of the conditions set out in the form, the commander may authorize modification. The requirements of the agreement are substantially met when the state authority informs the accused's commander of the accused's prospective release for return to military authorities and when the state furnishes the accused transportation back to his or her station, together with necessary funds to cover incidental expenses en route. The accused's commander provides copies of the statement or agreement of this section and in § 884.6(b) to the civilian authority to whom the member was delivered and to the Air Force unit, activity, or recruiting office nearest to the place of trial designated in the agreement as the point of contact in the event of release on bail or on recognizance (see § 884.4). The accused's commander immediately notifies the civilian authority if the member has been discharged from the Air Force.

§ 884.8 Request for delivery by state authorities when the member is located in a different state.

(a) This part applies to members who are located in the United States. With respect to the extradition process, Air Force personnel have the same status as persons not in the Armed Forces. Accordingly, if a state other than the state in which the member is located requests the delivery of a military member, in the absence of a waiver of extradition process by the member concerned, that state must use its normal extradition procedures to make arrangements to take the individual into custody in the state where he or she is located.

[1] Air Force publications may be obtained through NTIS, 5285 Port Royal Road, Springfield, VA 22161, if not available online at http://afpubs.hq.af.mil.

[2] See footnote in § 884.1.

[3] See footnote in § 884.1.

(b) The Air Force will not transfer a military member from a base within one state to a base within another state for the purpose of making the member amenable to prosecution by civilian authorities.

§ 884.9 Request for custody of members stationed outside the United States.

(a) Authority. This section implements Pub. L. 100–456, section 721(a), and DoD Directive 5525.9, December 27, 1988.

(b) The Air Force expects members to comply with orders issued by Federal or state court of competent jurisdiction, unless noncompliance is legally justified. Air Force members who persist in noncompliance are subject to adverse administrative action, including separation for cause under AFI 36–3206, Administrative Discharge Procedures, and AFI 36–3208, Administrative Separation of Airmen.

(c) Air Force officials will ensure that members do not use assignments or officially sponsored residence outside the United States to avoid compliance with valid orders of Federal or state court of competent jurisdiction.

(d) Noncompliance with a court order may be legally justified when the individual can adequately demonstrate that the conduct, which is the subject of the complaint or request, was sanctioned by supplemental court orders, equally valid court orders of other jurisdictions, good faith legal efforts to resist the request, or other reasons. HQ USAF/JAG, HQ AFLSA/JACA, and Air Force legal offices in the jurisdiction concerned will provide legal support to servicing staff judge advocates who request assistance in reviewing these issues.

(e) When Federal, state, or local authorities request delivery of an Air Force member stationed outside the United States who is convicted of or charged with a felony or other serious offense or who is sought by such authorities in connection with the unlawful or contemptuous taking of a child from the jurisdiction of a court or from the lawful custody of another person, the member's commander will normally expeditiously return the member to the United States for delivery to the requesting authorities.

(1) A serious offense is defined as one punishable by confinement for more than 1 year under the laws of the requesting jurisdiction.

(2) Delivery of the member is not required if the controversy can be resolved without returning the member to the United States or if the request for delivery of the member is denied in accordance with this instruction.

(f) Ordinarily, do not return an Air Force member stationed outside the United States to the United States for delivery to civilian authorities if the offense is not specified in paragraph (e) of this section. TJAG may direct return when deemed appropriate under the facts and circumstances of the particular case.

(g) Before taking action under this section, give the member the opportunity to provide evidence of legal efforts to resist the court order or process sought to be enforced or otherwise to show legitimate cause for noncompliance.[4]

§ 884.10 Returning members, employees, and family members from overseas.

The Air Force expects persons overseas wanted by Federal or state authorities to make themselves available to those authorities for disposition. If they do not, DoD Directive 5525.9, Compliance of DoD Members, Employees, and Family Members Outside the United States With Court Orders, 10 U.S.C. 814, and Pub. L. 100–456, section 721(a), authorize and require commanders to respond promptly to requests from civilian authorities for assistance in returning members, civilian employees, and family members from overseas.

§ 884.11 Procedures for return of an Air Force member to the United States.

(a) Include the following information in a request for return of an Air Force member to the United States for delivery to civilian authorities.

(1) Fully identify the member sought by providing the member's name, grade, SSN, and unit of assignment, to the extent the information is known.

(2) Specify the offense for which the member is sought. If the member is charged with a crime, specify the maximum punishment under the laws of the requesting jurisdiction. Specify whether the member is sought in connection with the unlawful or contemptuous taking of a child from the jurisdiction of a court or the lawful custody of another.

(3) Include copies of all relevant requests for assistance, indictments, information, or other instruments used to bring charges, all relevant court orders or decrees, and all arrest warrants, writs of attachment or capias (writs authorizing arrests), or other process directing or authorizing the requesting authorities to take the member into custody. Also, include reports of investigation and other materials concerning the background of the case if reasonably available.

(4) Indicate whether the requesting authorities will secure the member's lawful delivery or extradition from the port of entry to the requesting jurisdiction, whether they will do so at their own expense, and whether they will notify HQ AFLSA/JAJM of the member's release from custody and of the ultimate disposition of the matter.

(5) Any U.S. attorney or assistant U.S. attorney, governor or other duly authorized officer of a requesting state or local jurisdiction, or the judge, magistrate, or clerk of a court of competent jurisdiction must sign the request.

(b) Civilian authorities making requests for return of members to the United States for delivery to them should direct their request to HQ AFLSA/JAJM. If another Air Force agency or official receives the request, immediately send it to HQ AFLSA/JAJM.

(c) Upon receipt of a request, HQ AFLSA/JAJM promptly notifies the member's commander, who consults with the servicing staff judge advocate. The commander provides a report of relevant facts and circumstances and recommended disposition of the request through command channels to HQ AFLSA/JAJM. If the commander recommends denial of the request or a delay in processing or approving it, the commander provides the information specified in § 884.12(a)(1) through (a)(4) or § 884.13(a)(1) through (a)(4).

(d) After proper authority has approved a request for return of a member to the United States for delivery to civilian authorities, HQ AFLSA/JAJM notifies AFPC of the decision to return the member to the United States. AFPC issues permanent change of station (PCS) orders, assigning the member to an installation as close to the requesting jurisdiction as possible, considering the needs of the Air Force for personnel in the member's rank and AFSC.

(e) HQ AFLSA/JAJM notifies requesting authorities of the member's new assignment, port of entry into the United States and estimated time of arrival. Except during unusual circumstances, HQ AFLSA/JAJM notifies requesting authorities at least 10 days before the member's return.

§ 884.12 Delays in returning members to the United States.

(a) On a request to return a member to the United States for delivery to civilian authorities. TJAG may grant a delay of not more than 90 days in completing action when one or more of the following are present:

(1) Efforts are in progress to resolve the controversy to the satisfaction of the

[4] See footnote in § 884.1

requesting authorities without the member's return to the United States.

(2) Additional time is required to permit the member to provide satisfactory evidence of legal efforts to resist the request or to show legitimate cause for noncompliance.

(3) Additional time is required to permit the commander to determine the specific effect of the loss of the member on command mission and readiness or to determine pertinent facts and circumstances relating to any international agreement, foreign judicial proceeding, DoD, Air Force, or other military department investigation or court-martial affecting the member.

(4) Other unusual facts or circumstances warrant delay.

(b) AFLSA/JAJM promptly reports all delays in cases falling under AFPD 51–10,[5] paragraph 3, through SAF/GC and SAF/MI or USD/P&R and to DoD/GC.

(c) Delays in excess of 90 days are not authorized in cases falling under AFPD 51–10, paragraph 3, unless approved by USD/P&R.

§ 884.13 Denials of a request for return of a member to the United States.

(a) A request for return of a member to the United States for delivery to civilian authorities may be denied when:

(1) The member's return would have an adverse impact on operational readiness or mission requirements.

(2) An international agreement precludes the member's return.

(3) The member is the subject of foreign judicial proceedings, court-martial, or a DoD, Air Force, or other military department investigation.

(4) The member showed satisfactory evidence of legal efforts to resist the request or other legitimate cause for noncompliance or when other unusual facts or circumstances warrant a denial.

(b) Commanders promptly send to HQ AFLSA/JAJM information supporting a determination that denial may be appropriate. In cases warranting denial, TJAG promptly sends a recommendation and supporting documentation, through SAF/GC and SAF/MI, to USD/P&R for decision.

(c) The fact that a recommendation for denial is pending does not by itself authorize noncompliance or a delay in compliance with any provision of this section, but TJAG may consider a pending request for denial in determining whether to grant a delay.

§ 884.14 Compliance with court orders by civilian employees and family members.

(a) The Air Force expects civilian employees and family members to comply with orders issued by Federal or state court of competent jurisdiction, unless noncompliance is legally justified. Air Force civilian employees who persist in noncompliance are subject to adverse administrative action, including separation for cause as provided in AFI 36–704, Discipline and Adverse Actions (PA).[6]

(b) Air Force officials ensure that civilian personnel and family members do not use assignments or officially sponsored residence outside the United States to avoid compliance with valid orders of Federal or state court of competent jurisdiction.

§ 884.15 Procedures involving a request by Federal or state authorities for custody of an overseas civilian employee or a command-sponsored family member.

(a) The procedures of this section apply to civilian employees, including nonappropriated fund instrumentality (NAFI) employees, who are assigned outside the United States, and to command-sponsored family members residing outside the United States.

(b) This section applies only when Air Force authorities receive a request for assistance from Federal, state, or local authorities involving noncompliance with a court order and when noncompliance is the subject of any of the following: An arrest warrant; indictment, information, or other document used in the jurisdiction to prefer charges; or a contempt citation involving the unlawful or contemptuous removal of a child from the jurisdiction of the court or the lawful custody of a parent or third party.

(c) To the maximum extent possible, consistent with provisions of international agreements and foreign court orders, DoD and military department investigations, and judicial proceedings, commanders comply with requests for assistance. After exhausting all reasonable efforts to resolve the matter without the employee or family member returning to the United States, the commander shall strongly encourage the individual to comply. The commander shall consider imposing disciplinary action (including removal) against the employee or withdrawing command sponsorship of the family member, as appropriate, for failure to comply.

§ 884.16 Reporting requests for assistance and action.

The commander or designee promptly reports each request for assistance and intended action by message. Send reports to HQ AFLSA/JAJM, which submits required reports, through channels, to USD/P&R, HQ AFLSA/JAJM conducts all communications with requesters.

§ 884.17 Commander's instruction letter to member.

Subject: Instructions in Case of Release on Bail or Personal Recognizance

1. You are being delivered to the custody of civilian authorities, pursuant to the provisions of AFI 51–1001. This action does not constitute a discharge from the Air Force. In the event that you are released from civilian custody on bail or on your own recognizance, report immediately in person or by telephone to the (Air Force unit, activity, or recruiting office) for further instructions. Advise the commander of your name, rank, SSN, organization, the circumstances of your release from custody, and the contents of this letter.

2. Certain restrictions may be placed upon you by civilian authorities in connection with your temporary release from custody. Be certain to include in your report what these limitations are.

3. AFI 51–1001, paragraph 4 provides that the authority to whom you report will notify your commander. If that is not possible, request the nearest Air Force base military personnel flight to contact HQ AFPC/DPMARS or DPMRPP2 by the fastest means available. Provide your name, rank, SSN, organization, and the circumstances of your release; further instruction will then be given to you.

[Signature Element]

§ 884.18 Civilian Authority's acknowledgment of Transfer of Custody and Agreement to Notify Member's Commander.

1. A warrant for the arrest of (name, rank, and SSN), hereinafter referred to as the ''member,'' and who is charged with (offenses) has been issued by (civilian authority) and in execution, thereof, I accept his or her custody.

2. In consideration of the delivery of member at (location) to me for trial upon the above charge, pursuant to the authority vested in me as (position), I hereby agree to the following:

a. The commander (name, rank, unit, telephone), will be advised of the disposition of the charges.

b. The member will be immediately returned to the custody of the military upon completion of the trial, if acquitted; or upon satisfying the sentence imposed, if convicted; or upon other disposition of the case.

c. The member's return will be to (location) or to such other place as may be designated by the Department of the Air Force.

3. The member's return will not be required if the member's commander has indicated that return is not appropriate. Instead of actual delivery, transportation for the member may be arranged so long as it is without expense to the United States or to the member.

4. Pending disposition of the charges, the member will remain in the custody of [name of agency and location], unless released on bail or the member's own recognizance, in

[5] See footnote in § 884.1.

[6] See footnote in § 884.1

which event [Air Force unit, activity, or recruiting office nearest place of trial] will be notified.

[Signature Element]

Janet A. Long,

Air Federal Register Liaison Officer.

[FR Doc. 00–27520 Filed 10–26–00; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–00–243]

Drawbridge Operation Regulations; Hutchinson River, Eastchester Creek, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the South Fulton Avenue Bridge, mile 2.9, across the Eastchester Creek in New York. This deviation from the regulations allows the bridge owner to keep the bridge in the closed position, from 8 a.m. Monday through 4:30 p.m. Thursday, for four weeks, October 23, 2000, through November 17, 2000. This action is necessary to facilitate sidewalk replacement at the bridge.

DATES: This deviation is effective October 23, 2000, through November 17, 2000.

FOR FURTHER INFORMATION CONTACT: Joe Schmied, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The South Fulton Avenue Bridge, mile 2.9, across the Eastchester Creek has a vertical clearance of 6 feet at mean high water, and 13 feet at mean low water in the closed position. The bridge owner, Westchester County Department of Public Works (WCDPW), requested a temporary deviation from the operating regulations to facilitate sidewalk replacement at the bridge. The existing operating regulations at 33 CFR 117.793(c) require the bridge to open on signal from three-hours before to three-hours after high tide. At all other times the bridge shall open on signal if at least four-hours advance notice is given.

This deviation to the operating regulations allows the owner of the South Fulton Avenue Bridge to keep the bridge in the closed position from 8 a.m. Monday through 4:30 p.m. Thursday, for four weeks, October 23, 2000 through November 17, 2000. Vessels that can pass under the bridge without an opening may do so at all times.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 6, 2000.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 00–27666 Filed 10–26–00; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–200018; FRL–6892–2]

Approval and Promulgation of State Implementation Plans (SIP) for the State of Alabama—Call for 1-Hour Attainment Demonstration for the Birmingham, Alabama Marginal Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a State Implementation Plan (SIP) call to require the State of Alabama to submit a 1-hour ozone attainment SIP for the Birmingham marginal nonattainment area within six months of the effective date of this final SIP call. EPA is issuing this SIP call because we find, in light of the Birmingham area's continued nonattainment for ozone, that the Alabama SIP is substantially inadequate to attain the 1-hour ozone national ambient air quality standard (NAAQS). In light of this finding, section 110(k)(5) of the Clean Air Act (CAA) authorizes EPA to require Alabama to submit a 1-hour ozone attainment plan for the Birmingham area to correct this inadequacy. If the State of Alabama fails to submit an attainment SIP in response to this SIP call, EPA will issue a finding that the State failed to submit a required SIP pursuant to section 179(a) of the CAA. The finding would start the clocks for mandatory sanctions and development of a federal implementation plan (FIP).

EFFECTIVE DATE: November 27, 2000.

ADDRESSES: Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Please reference file AL–200018. The Region 4 office may have additional background documents not available at the other locations. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region 4 Air Planning Branch, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham, Regulatory Planning Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303. The telephone number is (404) 562–9038. Ms. Bingham can also be reached via electronic mail at Bingham.Kimberly@epa.gov.

SUPPLEMENTARY INFORMATION: The supplemental information is organized in the following order:

I. Background
II. Why is EPA issuing this SIP call for the Birmingham marginal ozone nonattainment area?
III. What happens if the State of Alabama does not submit a SIP responding to this SIP call?
IV. Response to Comments received on the Proposed SIP call
V. Administrative Requirements

I. Background

On November 15, 1990, Jefferson and Shelby Counties, Alabama, were designated as the Birmingham marginal ozone nonattainment area. Section 182(f)(1)(A) of the CAA provides for an exemption for New Source Review offsets for nitrogen oxides (NO_X) in ozone nonattainment areas where a state shows and EPA agrees that additional NO_X reductions would not contribute to attainment of the ozone standard in that area. In 1992, the Alabama Department of Environmental Management (ADEM) requested and received from EPA a NO_X exemption under this statutory provision for the Birmingham marginal ozone nonattainment area (58 FR 45439).

Section 107(d)(3)(E) of the CAA sets forth five specific requirements that states must include in a redesignation request in order for EPA to redesignate an area from nonattainment to attainment. EPA provided guidance on redesignations in the General Preamble for the Implementation of the CAA, 57 FR 13498 (April 16, 1992), supplemented at 57 FR 18070 (April 28, 1992). The primary memorandum providing further guidance with respect to section 107(d)(3)(E) is dated

September 4, 1992, and issued by the Director, Air Quality Management Division, Subject: Procedures for Processing Requests to Redesignate Areas to Attainment (Calcagni Memorandum).

Based on three years of air quality data from 1991–1993, the Birmingham area attained the 1-hour ozone standard, thus meeting the requirement for the area to attain the 1-hour ozone NAAQS by November 15, 1993. The area continued to maintain the ozone NAAQS through 1994. The State of Alabama through ADEM submitted a request for redesignation of the Birmingham marginal ozone nonattainment area to attainment on March 16, 1995. In a letter dated February 15, 1995, addressing the prehearing submittal, EPA requested that ADEM submit supplemental information needed for the redesignation request to be approvable. ADEM submitted this supplemental information to EPA on July 21, 1995. A direct final rule approving the redesignation request was signed by the Regional Administrator and forwarded to the EPA Federal Register Office on August 15, 1995. The direct final rule contained a 30 day period for public comment on the redesignation request.

Prior to publication of the document, EPA determined that the area registered a violation of the 1-hour ozone NAAQS based on an exceedance that occurred August 18, 1995. As a result, EPA directed the Office of Federal Register to recall the direct final rule from being published. The ambient data was quality assured according to established procedures for validating such monitoring data. Subsequently, EPA withdrew the approval notice, and disapproved the maintenance plan and redesignation request. EPA also revoked the NO_X waiver for the Birmingham area which was previously granted based on a determination that the area had clean air quality data (62 FR 49158, September 19, 1997). Additional violations of the 1-hour ozone NAAQS were recorded in the Birmingham area during the 1996 and 1997 ozone seasons, prompting EPA to request that the State of Alabama adopt a federally enforceable commitment to submit a SIP revision that would provide for the attainment of the 1-hour ozone NAAQS. Because ADEM submitted the final commitment without Board adoption which prevented approval into the federally enforceable SIP, Region 4 informed the State that a SIP call would be initiated.

The proposed rulemaking notice announcing the SIP call was published in the **Federal Register** on December 16, 1999, (See 64 FR 70205). In that action, EPA proposed to require the State of Alabama to submit an attainment SIP within six months after final action is taken on the SIP call and to implement controls by May 2003.

II. Why is EPA Issuing This SIP call for the Birmingham Marginal Ozone Nonattainment Area?

To assure that SIPs provide for the attainment and maintenance of the relevant NAAQS, section 110(k)(5) of the CAA authorizes EPA to find that a SIP is substantially inadequate to attain or maintain a NAAQS, and to require (''call for'') the State to submit, within a specified period, a SIP revision to correct the inadequacy. This CAA requirement for a SIP revision is known as a ''SIP call.'' The CAA authorizes EPA to allow a state up to 18 months to respond to a SIP call. EPA is issuing this SIP call, because violations of the 1-hour ozone NAAQS have been recorded in the Birmingham area for the last several 3-year periods, which were after the required attainment date of November 15, 1993. EPA is authorized under section 110(k)(5) to issue this SIP call requiring the State of Alabama to develop a 1-hour ozone attainment plan as a SIP revision for the Birmingham area because EPA finds the current Alabama SIP inadequate to assure attainment and maintenance of the 1-hour ozone NAAQS. Also, in consideration of the length of time that has passed since the required attainment date of November 15, 1993, the substantial air quality modeling already completed, and the ongoing discussions with ADEM, EPA believes it is reasonable to require the State of Alabama to make the submittal within six months of finalization of this SIP call.

III. What Happens if the State of Alabama Does Not Submit a SIP Revision Responding to This SIP Call?

If EPA finds the State of Alabama has failed to submit a complete 1-hour ozone attainment plan for the Birmingham nonattainment area as required by this SIP call, or disapproves the attainment plan, EPA will apply sanctions within 18 months of the finding as authorized by sections 110(m), 179(a)(1), and 179(a)(2) of the CAA. Sanctions available to EPA under section 179 of the CAA include highway sanctions and emission offsets. Pursuant to EPA implementing regulations at 40 CFR 52.31, the emission offset sanction is applied first. Under this sanction, the ratio of emission reductions that must be obtained to offset increased emissions caused by new major sources or modifications to major sources in the Birmingham area must be at least two to one. If the State of Alabama does not make a complete submission within six months after the offset sanction applies, then the highway funding sanction will apply, in accordance with CAA sections 179(a) and (b)(1) and 40 CFR 52.31. In addition, sanctions would apply in the same manner if the State of Alabama submits a plan that EPA determines is incomplete or that EPA disapproves. Finally, CAA section 110(c) provides that EPA promulgate a federal implementation plan (FIP) no later than 24 months after a finding of failure to submit a SIP unless the State of Alabama has submitted and EPA has approved the attainment plan.

IV. Response to Comments Received on the Proposed SIP Call

EPA received seventeen comments in response to the proposed SIP call. EPA compiled the comments into seven categories, and they are addressed below.

Comment 1. ''Even though ADEM'' s regulatory development is short in comparison to most states, a minimum of six months is necessary from proposal to effective date. If, for example, significant comments are received, this process can be even longer. Moreover, a sufficient time period should be given to enable the stakeholder group to provide adequate input. Six months is simply not enough time to fully address the area's ozone problem.''

Response: EPA is authorized under section 110(k)(5) to issue this SIP call requiring the State of Alabama to develop a 1-hour ozone attainment SIP revision for the Birmingham area. EPA can allow up to 18 months for a State to submit a plan, but has the discretion to determine what is a reasonable timeframe for submission of a plan in response to a SIP call. EPA believes that six months is reasonable. In a letter dated February 4, 1997, EPA requested that the State of Alabama provide a timeline identifying when a 1-hour attainment SIP would be submitted. In response, ADEM submitted a timeline in a letter dated March 13, 1997, that had a submission date for the 1-hour attainment SIP of March 1998. Because of several policy changes associated with the new 8-hour ozone standard, EPA requested that the State of Alabama adopt a federally enforceable commitment to submit a SIP that would provide for the attainment of the 1-hour ozone NAAQS. ADEM submitted the final commitment without Board adoption, precluding approval into the federally enforceable SIP. That

commitment included a final submittal date of September 1999. In consideration of the length of time that EPA has already spent working with ADEM in an effort to develop an attainment plan and the substantial air quality modeling already completed toward this end, EPA believes it is reasonable to require the State of Alabama to submit the attainment SIP in six months. ADEM prepared a draft attainment demonstration and submitted it to EPA on September 10, 1999. EPA submitted comments on the draft submittal, and ADEM submitted a revised attainment demonstration on April 21, 2000, in response to EPA's comments. The draft attainment demonstration would achieve the emission reductions through controls on power plants and a low sulfur fuel program. EPA Region 4 continues to work with ADEM to resolve all remaining issues with the draft plan to ensure that the regulations necessary for attainment are adopted in a timely fashion.

Comment 2. ''The consultative requirements of our Conformity SIP require that the signatory parties be given an opportunity to comment on a draft SIP revision before undertaking the rulemaking process. This lengthens the time between EPA's preliminary approval of our draft SIP revision and the beginning of the formal rulemaking process.''

Response: The transportation conformity interagency consultation process is continuous throughout the development of a SIP and transportation plans. Its purpose is to ensure that the transportation plan is developed in a manner that supports the state's efforts toward attainment/maintenance of the 1-hour ozone NAAQS. If consultation is conducted on a continual basis and issues are discussed up-front in the plan development stage, then it should not lengthen the rulemaking process. In fact, consultation should streamline it, by resolving issues early in the process. Formal concurrence by all interagency partners is not a prerequisite for the State to move forward in its SIP development and rulemaking.

Comment 3. ''EPA has acknowledged the difficulties, both technical and procedural, in preparing approvable ozone attainment SIPs across the country by frequently extending submission and attainment times in other urban areas.''

Response: EPA has provided flexibility for some areas with respect to SIP submission requirements and with attainment dates. In the early to mid-1990's, EPA was concerned that many areas in the eastern United States were having difficulty demonstrating attainment by the statutory deadline because of the potential transport of ozone and its precursors (volatile organic compounds (VOCs) and NO_X) from other States. On March 2, 1995, EPA issued a policy document, entitled *Ozone Attainment Demonstrations*, providing that eastern states that participated in a process to assess regional transport could follow a two-phase submission process for attainment demonstrations for ozone nonattainment areas classified as serious or severe. The 37 easternmost states participated in this process, which was called the Ozone Transport Assessment Group (OTAG). OTAG also included representatives from industry, environmental groups, and academia. Over approximately two years, OTAG conducted studies and made recommendations to EPA. In response to OTAG recommendations, EPA called on twenty-two states and the District of Columbia to reduce emissions of NO_X that were transported to other states (NO_X SIP Call) , 63 FR 57356 (October 27, 1998).

In addition, EPA has issued guidance providing that an area that is affected by transport may receive an attainment date extension that reflects the time for the implementation of regional NO_X reductions or the attainment date for any upwind nonattainment area that is the source of transport and that has a later attainment date.

The policy concerning SIP submission dates for serious and severe areas is inapplicable here. The regional analysis that formed the basis for the two-phased approach for serious and severe areas has been completed since 1998. EPA addressed more fully in the response to comment 1, the factors EPA considered in determining the appropriate SIP submittal date for the Birmingham attainment demonstration.

With respect to the attainment date for the Birmingham area, EPA is not setting an attainment date through this action. Alabama will need to establish an appropriate attainment date in its SIP submittal. At this time, EPA believes that the attainment demonstration for Birmingham should provide for attainment by November 2003, since EPA is unaware of any evidence that Birmingham is affected by transport from a nonattainment area with an attainment date later than 2003.

Comment 4. ''A new local stakeholder group should be required and constituted which includes representatives from health, government, business, environmental, and public interests. This group will advise and provide input for the SIP. The potential exists for considerable local opposition to the plan if the public is not involved in the planning process.''

Response: It is important to note that EPA does not require states to form a stakeholders group to assist with the development of SIPs, including attainment demonstrations. It is up to the state to decide whether or not to involve a stakeholder group. EPA does require that the State of Alabama hold a public hearing before submitting a final SIP. Therefore, the public will have an opportunity to provide input on the Birmingham 1-hour ozone attainment demonstration at the public hearing.

Although not required, in 1997, ADEM did form an Advisory Committee to assist with the development of a control strategy for the Birmingham area. Representatives from ADEM, other State agencies, EPA, private industry, and other local stakeholders made up this Advisory Committee.

Comment 5. ''EPA's delay in addressing the draft SIP has put the EPA desired compliance deadline of May 2003 in jeopardy for Alabama Power. Without an approved SIP, we are quickly reaching the point where a May 2003 compliance deadline is not possible at any reasonable cost. We have already had to postpone awarding a contract for required equipment and are in the process of rescheduling the planned unit outages. We have control over our unit outages, however the equipment implementation challenges aren't necessarily confined to internal resources. In fact, most critical paths pertain to external circumstances. There are many NO_X control projects in the region, with many vying for the same supply materials, manufacturers, and labor. The more delay in obtaining an approved Alabama SIP from EPA, the longer it will take to procure these finite external resources.''

Response: Alabama Power did not specify in its comment letter the types of controls that would be implemented at the two utility plants identified in the draft attainment demonstration. Even if Alabama Power chose a more complicated control to implement such as selective catalytic reduction, EPA has estimated that this control could be readily installed within 21 months which is within the timeframe to meet a 2003 compliance deadline. With respect to Alabama Power experiencing a delay due to the lack of supply materials, manufacturers, and labor, EPA examined each of these considerations and found that an adequate supply of each would be available. For a more detailed

discussion on all of this information, see the report released in September 1998, by the EPA Office of Air and Radiation, Acid Rain Division entitled, ''Feasibility of Installing NO_X Control Technologies in 2003.'' The web address for the feasibility report is *http://www.epa.gov/capi/ipm/npr.htm.*

Comment 6. ''The plan should address the underlying issues of transportation planning and sprawling development patterns that can result from unintelligent transportation investments. Thus, the plan should be comprehensive and incorporate a balanced portfolio of available control strategies. I agree that the State of Alabama should develop a plan that will solve the ozone pollution problem in Jefferson and Shelby counties. The plan needs to be comprehensive and must incorporate input from the public. The following elements should be included: all available control measures—including vehicle emissions testing and transportation control measures which were not included in the draft SIP revision.''

Response: Birmingham is designated as a marginal nonattainment area for the ozone NAAQS. In marginal nonattainment areas, EPA does not require that vehicle emissions testing be used as a control measure. Further, EPA does not require states to implement any particular transportation control measures. To demonstrate attainment of the NAAQS, the State has the option of choosing between a variety of control measures. States are given this flexibility to ensure that the most effective and feasible control measures for the affected area are implemented. In its draft plan, Alabama has opted to place stricter standards on two utilities and to continue implementing its low sulfur fuel program. Alabama also adopted an emergency rule to require reformulated gasoline or a low sulfur fuel in 1998, to provide further reductions in ozone precursors in the Birmingham nonattainment area. Alabama's low sulfur fuel rule indirectly addresses concerns relating to the impact of mobile sources due to sprawl by requiring stricter standards for fuel. Further, on December 21, 1999, EPA finalized the Tier 2/Low Sulfur rules which place stricter standards on cars, light duty trucks and the fuel used to operate these vehicles. Under that program, cars will be cleaner nationwide starting in model year 2004.

Comment 7. ''USEPA should call upon ADEM to educate and involve the public with respect to modeling of air quality conditions in the region and modeling of improvements to air quality resulting from alternative control strategies. As we are beginning to see in Atlanta, strategies to comply with air quality standards have become a complex computer modeling exercise unknown, and without USEPA intervention unknowable, to even the most attentive and interested stakeholders. A public education and involvement program focusing upon the modeling component of SIP development should condition any extension of the submittal date.''

Response: ADEM and the Jefferson County Bureau of Environmental Health both have Education and Outreach programs that focus on educating the public on various issues including air quality modeling. EPA does not have the authority to require states to sponsor such education and outreach programs. However, EPA does support the outreach efforts of both ADEM and Jefferson County through the CAA section 105 grant program, and encourages them to continue to work with and inform the public about air quality issues.

Final Action

EPA finds that the State of Alabama's SIP is inadequate in that it fails to assure attainment and maintenance of the 1-hour ozone NAAQS for the Birmingham nonattainment area. To address this inadequacy, EPA is calling on the State of Alabama to submit a 1-hour ozone attainment plan as a SIP revision for the Birmingham nonattainment area within six months of the publication date of today's action. In addition, the sanctions contained in sections 179(a) and (b) of the CAA and in 40 CFR 50.31 will apply in accordance with 40 CFR 50.31 if EPA determines that the State fails to submit the required attainment demonstration plan for Birmingham, or the State submits a plan that EPA finds is incomplete or that EPA disapproves.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13132: 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 defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

This final rule 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. In issuing this SIP Call, EPA is acting under section 110(k)(5), which requires the Agency to require a State to correct a deficiency that EPA has found in the State implementation plan (SIP). Through this action, EPA has determined that the Birmingham 1-hour ozone nonattainment area has been in violation of the 1-hour ozone NAAQS over the last several 3-year periods and is requiring the State to submit a plan demonstrating how the area can be brought back into attainment. This action calling on the State does not change the established relationship between the State and EPA under title I of the CAA. Under title I of the CAA States have the primary responsibility to develop plans to attain and maintain the NAAQS. The State has discretion to choose the control requirements necessary to bring the area into attainment with the NAAQS. Finally, this action will not impose substantial direct compliance costs. This action affects one area in one State. While the State will incur some costs to develop the plan, those costs are not expected to be substantial. Moreover, under section 105 of the CAA, the federal government supports the States' SIP development activities by providing partial funding of State programs for the prevention and control of air pollution. Thus, Executive Order 13132 does not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult extensively with State and local officials regarding the requirements of this SIP Call as noted in section I and in response to comment 1 above.

C. 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 final rulemaking is not subject to Executive Order 13045 because it is not economically significant, nor does it involve decisions on environmental health or safety risks that may disproportionately affect children.

D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action requires the State of Alabama to develop a SIP to attain the national ambient air quality standard for ozone for the Birmingham, Alabama, area. There are no tribal governments affected by this rulemaking. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

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

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

For purposes of assessing the impacts of today's final rulemaking on small entities, small entity is defined as: (1) A small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 12.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

I certify that this action will not have a significant economic impact on a substantial number of small entities. The SIP Call does not establish any new requirements applicable to small entities. EPA is issuing this SIP call because it finds that the State of Alabama's SIP is inadequate to assure attainment and maintenance of the 1-hour ozone NAAQS for the Birmingham nonattainment area. In submitting its 1-hour ozone attainment plan SIP revisions as required by this SIP call, Alabama has discretion in formulating the components of that attainment plan.

F. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (''UMRA''), 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, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that ''includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more * * * in any one year. A ''Federal mandate'' is defined under section 421(6), 2 U.S.C. 658(6), to include a ''Federal intergovernmental mandate'' and a ''Federal private sector mandate.'' A ''Federal intergovernmental mandate,'' in turn, is defined to include a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' section 421(5)(A)(i), 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is ''a condition of Federal assistance,'' section 421(5)(A)(i)(I). A ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector,'' with certain exceptions, section 421(7)(A), 2 U.S.C. 658(7)(A).

EPA believes that it is questionable whether a requirement to submit a SIP revision constitutes a federal mandate. The obligation for a State to revise its SIP arises out of sections 110(a) and 110(k)(5) of the CAA and is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of UMRA (2 U.S.C. 658(a)(I)). Even if it did, the duty could be viewed as falling within the exception for the condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)).

In addition, even if the obligation for a State to revise its SIP does create an enforceable duty within the meaning of UMRA, this SIP Call does not trigger section 202 of UMRA because the aggregate to the State, local, and tribal governments to comply are less than $100,000,000 in any one year. Because this SIP Call does not trigger section 202 of UMRA, the requirement in section 205 of UMRA that EPA identify and consider a reasonable number of regulatory alternatives and adopt to the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule is not applicable.

Furthermore, EPA is not directly establishing any regulatory requirements that may significantly impact or uniquely affect small governments, including tribal governments. Thus, EPA is not obligated to develop under section 203 of UMRA a small government agency plan. Finally, with regard to the intergovernmental consultation provisions of section 204 of UMRA, EPA carried out numerous consultations with the State of Alabama over several years as noted in section I above and in response to comment 1.

G. Submission to Congress and the Comptroller General

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

report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act of 1995 (NTTAA) requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this action. Today's does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 26, 2000. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 19, 2000.

Carol M. Browner,

Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority for citation for part 52 continues to read as follows:

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

Subpart B—Alabama

2. Section 52.66 is amended by designating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 52.66 Control Strategy: Ozone.

* * * * *

(b) The State of Alabama is required to submit an attainment demonstration SIP for the Birmingham 1-hour ozone nonattainment area by April 27, 2000. For purposes of the SIP revision required by this section, EPA may make a finding as applicable under section 179(a)(1)–(4) of the CAA, 42 U.S.C. 7509(a)(1)–(4), starting the sanctions process set forth in section 179(a) of the CAA. Any such finding will be deemed a finding under § 52.31(c) and sanctions will be imposed in accordance with the order of sanctions and the terms for such sanctions established in § 52.31.

[FR Doc. 00–27584 Filed 10–26–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT–25–7223a; A–1–FRL–6891–6]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are converting our limited approval under the Clean Air Act of the State of Connecticut's State Implementation Plan (SIP) revision for an enhanced vehicle inspection and maintenance (I/M) program, which was granted on March 10, 1999 (64 FR 12005), to a full approval. In our March 10, 1999 limited approval, we said Connecticut needed to submit revisions to its SIP to address eight sections of EPA's enhanced I/M regulation for full approval. We have determined that on November 16, 1999 Connecticut submitted revisions that meet all of the conditions for full approval. The intent of this action is to convert our limited approval of Connecticut's enhanced vehicle I/M program SIP to a full approval.

DATES: This direct final rule is effective on December 26, 2000 without further notice, unless EPA receives relevant adverse comment by November 27, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), Environmental Protection Agency, EPA-New England, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA-New England, One Congress Street, 11th floor, Boston, MA and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Peter Hagerty, (617) 918–1049.

SUPPLEMENTARY INFORMATION: This Supplementary Information section is organized as follows:

I. What action Is EPA taking today?
II. What Connecticut SIP revision is the topic of this action?
III. What were the requirements for full approval of the Connecticut program?
IV. How did Connecticut fulfill these requirements for full approval?
V. EPA Action
VI. Administrative Requirements

I. What Action Is EPA Taking Today?

In this action, we are converting our limited approval of Connecticut's I/M program as a revision to the SIP to a full approval.

II. What Connecticut SIP Revision Is the Topic of This Action?

This notice deals with a revision to the State of Connecticut's Clean Air Act SIP submitted by the State of Connecticut on November 16, 1999 for certain program elements necessary to complete the enhanced vehicle inspection and maintenance (I/M) program. Today we are acting only upon this November 16, 1999 submittal to determine that Connecticut submitted revisions meeting all of the conditions necessary to convert the limited approval of the enhanced I/M plan to a full approval. In so doing we are not reopening our March 10, 1999 final rulemaking granting limited approval of Connecticut's enhanced I/M SIP submitted on June 24, 1998, as supplemented on November 13, 1998.

III. What Were the Requirements for Full Approval of the Connecticut Program?

Approval of Connecticut's I/M program SIP required submission of information to meet the requirements of the following sections of the regulations: Network Type and Program Evaluation—40 CFR 51.353; Waivers and Compliance Via Diagnostic Inspection—40 CFR 51.360; Motorist Compliance Enforcement Program Oversight—40 CFR 51.362; Quality Assurance—40 CFR 51.363; Enforcement Against Contractors, Stations and Inspectors—40 CFR 51.364; Public Information and Consumer Protection—40 CFR 51.368; Compliance with Recall Notices—40 CFR 51.370; and On-road Testing—40 CFR 51.371.

IV. How Did Connecticut Fulfill These Requirements for Full Approval?

On November 16, 1999, Connecticut submitted revisions to its enhanced I/M SIP to EPA in order to correct conditions for full approval. The following is a description of the measures which Connecticut has submitted to meet each of the deficient areas described in the March 10, 1999 limited approval.

1. *Network Type and Program Evaluation—40 CFR 51.353*—Connecticut will utilize the NYTEST test performed on 1100 randomly selected vehicles in the test lanes. This is an acceptable option for program evaluation testing as explained in Inspection and Maintenance Program Evaluation Methodologies (EPA420–S–98–015). The legal authority for program evaluation is in Section 14–164c(e)(C) and Section 164h(a) and (b) of the Connecticut General Statutes. This section of the SIP now meets the requirements of EPA's I/M rule.

2. *Waivers and Compliance Via Diagnostic Inspection—40 CFR 51.360*—Connecticut has submitted revised regulation Section 14–164c–11a, entitled ''Emissions Repairs Expenditure Requirements to Receive Waiver,'' requiring a $450 expenditure for a waiver starting in January 2000, and $450 adjusted each year for the cost of living beginning in January 2001. This regulation was effective on June 24, 1999. This section of the SIP now meets the requirements of EPA's I/M rule.

3. *Motorist Compliance Enforcement Program Oversight—40 CFR 51.362*—Exhibit 3 of the November 16, 1999 SIP submittal describes in detail an enforcement oversight program meeting the requirements of this section. The legal authority for this aspect of the program is at Section 14–164c(j) of the Connecticut General Satutes. This section of the SIP now meets the requirements of EPA's I/M rule.

4. *Quality Assurance—40 CFR 51.363*—The state has submitted the needed procedures manuals in Exhibit 4 of the November 16, 1999 submittal. This section of the SIP now meets the requirements of EPA's I/M rule.

5. *Enforcement Against Contractors, Stations and Inspectors—40 CFR 51.364*—Exhibit 5 of the November 16, 1999 submittal contains a description of enforcement authority Connecticut has over the contractor that is operating the I/M program. Essentially, Connecticut can hold the contractor liable under the contract for monetary penalties for violations of the contract and the contract provides for disbarment of inspectors upon a finding of program violations or incompetence. The submittal also includes Connecticut Regulations pertaining to disciplinary and termination action with respect to state of Connecticut employees: Regulation 5–240–1.—Suspension.; Regulation 5–240–2.—Demotion.; and Regulation 5–240–3.—Dismissal. This section of the SIP now meets the requirements of EPA's I/M rule.

6. *Public Information and Consumer Protection—40 CFR 51.368*—Connecticut has submitted additional material in Exhibit 6 of the November 16, 1999. With this supplementary material the SIP meets all requirements of this section of EPA's I/M Rule.

7. *Compliance with Recall Notices—40 CFR 51.370*—Connecticut has provided in Exhibit 7 of the November 16, 1999 submittal an agreement with the contractor to enforce compliance with all recall notices prior to completing the next inspection. This agreement is adequate to meet the requirements of EPA's I/M rule.

8. *On-road Testing—40 CFR 51.371*—Connecticut has submitted a detailed description of remote sensing program screening 5500 vehicles per year. Legal authority for this program is at Section 14–164c(f) of the Connecticut General Statutes. When the March 10, 1999 limited approval was granted, states were required to have as part of the off-road testing program a requirement that vehicles which exceeded standards for this program be subjected to an out-of-cycle I/M test. However, the I/M flexibility rule EPA published in the **Federal Register** on July 24, 2000 (65 FR 45526) allows states to develop on-road testing programs that do not mandate out-of-cycle testing and repair. With this change to EPA's I/M rule, the Connecticut program meets the requirements of this section.

EPA's review of this material indicates that Connecticut has corrected all of the deficiencies with regard to I/M as described in the March 10, 1999 limited approval of the program.

V. EPA Action

EPA is converting its limited approval of Connecticut's enhanced I/M program to a full approval. An extensive discussion of Connecticut's enhanced I/M program and our rationale for our limited approval action was provided in the previous final rule for the Connecticut enhanced I/M program published on March 10, 1999 (see 64 FR 12005). This action to convert our limited approval to a full approval is being published without prior proposal because we view this as a noncontroversial amendment and because we anticipate no adverse comments. In a separate document in the ''Proposed Rules'' section of this **Federal Register** publication, we are proposing to convert our limited approval of Connecticut's enhanced I/M program SIP revision to a full approval if relevant adverse comments are filed. This action will be effective without further notice unless we receive relevant adverse comment by November 27, 2000. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. Any parties interested in commenting must do so at this time. If no such comments are received by November 27, 2000, you are advised that this action will be effective on December 26, 2000. You should send comments to the EPA-New England office listed in the *Addresses* section of this notice.

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies 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.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or

uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 26, 2000. EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and record keeping requirements.

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

Dated: October 19, 2000.

Mindy S. Lubber,

Regional Administrator, EPA-New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart H—Connecticut

§ 52.369 [Removed]

2. Section 52.369 is removed and reserved to read as follows:.

3. Section 52.370 is amended by adding paragraph (c)(89) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(89) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on November 16, 1999.

(i) Incorporation by reference.

(A) Subsection (b) of Section 14–164c-11a of the Regulations of Connecticut State Agencies Concerning Emissions Repairs Expenditure Requirement to Receive Waiver, adopted and effective June 24, 1999.

(ii) Additional materials.

(A) Letter from Connecticut Department of Environmental Protection dated November 19, 1999 submitting a revision to the Connecticut State Implementation Plan.

(B) Narrative portion of the Revision to State Implementation Plan for Enhanced Motor Vehicle Inspection and Maintenance Program, dated October 7, 1999.

4. In § 52.385, Table 52.385 is amended by removing entries ''22a–174–27'' and ''14–164c'' and adding new entries in their place to read as follows:

§ 52.385—EPA-approved Connecticut Regulations.

* * * * *

TABLE 52.385.—EPA-APPROVED REGULATIONS

Connecticut state citation	Title/subject	Dates	Date adopted by State	Date approved by EPA	Federal Register citation	Section 52.370
* *	*	*		*	*	*
22a–174–27	Emissions standards for periodic motor vehicle inspection and maintenance.	March 26, 1998.	March 10, 1999.	64 FR 12005	(c)78	Revised Department of Environmental Protection regulation contain I/M emission standards.
14–164c	Periodic Motor Vehicle Inspection and Maintenance.	April 7, 1998.	March 10, 1999.	64 FR 12005	(c)78	Revised Department of Motor Vehicles regulation for the Connecticut I/M Program.
		June 24, 1999.	October 27, 2000.	[Insert FR citation from published date].	(c)89	Revised subsection (b) of Section 14–164c–11a of the Department of Motor Vehicles regulation concerning emissions repairs expenditure requirement to receive waver.
* *	*	*		*	*	*

[FR Doc. 00–27655 Filed 10–26–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA037–01–7211a; A–1–FRL–6891–9]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; New Source Review Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the Commonwealth of Massachusetts. These revisions establish and require the implementation of the 1990 Clean Air Act Amendments (CAAA) requirements regarding New Source Review (NSR) in areas that have not attained the National Ambient Air Quality Standards (NAAQS). In addition, the revisions include other definitions and permitting procedures that make the Massachusetts nonattainment NSR rules consistent with Federal permitting requirements. The intended effect of this action is to approve revisions to 310 CMR 7.00 Appendix A, ''Emission Offsets and Nonattainment Review.'' This action is being taken in accordance with the Clean Air Act.

DATES: This direct final rule is effective on December 26, 2000 without further notice, unless EPA receives adverse comment by November 27, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Steven Rapp, Unit Manager, Air Permits Program, Office of Ecosytem Protection (mail code CAP), U.S. Environmental Protection Agency, EPA New England, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosytem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room M–1500, 401 M Street, (Mail Code 6102), S.W., Washington, D.C.; and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Brendan McCahill, (617) 918–1652.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 1994, the Massachusetts Department of Environmental Protection (DEP) formally submitted a revision to its State Implementation Plan (SIP) for purposes of meeting the requirements of the Clean Air Act (CAA). The revision consists of changes to Massachusetts' 310 CMR 7.00 Appendix A, ''Emission Offsets and Nonattainment Review.'' The DEP submitted additional changes to 310 CMR 7.00 Appendix A on April 14, 1995. The effect of the revisions is to make the DEP's rules regarding the permitting of new major sources or major modifications in nonattainment areas consistent with CAA requirements. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

A. General Requirements for Nonattainment NSR Requirements

The air quality planning requirements for nonattainment NSR are set out in part D of subchapter I of the Act. The EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment area NSR SIP requirements [see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of part D advanced in today's proposal and the supporting rationale.

Summary of Massachusetts' Regulation

The general nonattainment NSR requirements are found in sections 172 and 173 of part D of subchapter I of the

Act and must be met by all nonattainment areas. The following paragraphs reference the nonattainment NSR requirements required to be submitted to EPA by November 15, 1992 and explain how Massachusetts' rules meet those requirements. Massachusetts' existing SIP already contained some of these provisions while others are being approved today.

1. Massachusetts regulation 310 CMR 7.00 appendix A, section (5) (a) & (b), establishes provisions in accordance with section 173(a)(1)(A) of the CAA to assure that calculations of emissions offsets are based on the same emissions baseline used in the demonstration of Reasonable Further Progress (RFP).

2. Massachusetts regulation 310 CMR 7.00 appendix A, section (6)(b)1 and 2, establishes provisions in accordance with section 173(c)(1) of the CAA to allow offsets to be obtained in another nonattainment area if: (i) The area has an equal or higher nonattainment classification and, (ii) emissions from the other nonattainment area contribute to an NAAQS violation in the area in which the source would construct.

3. Massachusetts regulation 310 CMR 7.00 appendix A, section (6)(a) and (b), establishes provisions in accordance with sections 173(a) and 173(c)(1) of the CAA that any emissions offsets obtained in conjunction with the issuance of a license to a new or modified source shall be federally enforceable before permit issuance and must be in effect and enforceable by the time the new or modified source commences operation.

4. Massachusetts regulation 310 CMR 7.00 appendix A, section (6)(d), establishes provisions in accordance with section 173(c)(1) of the CAA to assure that emission increases from new or modified sources are offset by real reductions in actual emissions.

5. Massachusetts regulation 310 CMR 7.00 appendix A, section (6)(h), establishes provisions in accordance with section 173(c)(2) of the CAA to prevent emissions reductions otherwise required by the Act from being credited for purposes of satisfying part D offset requirements.

6. The 1990 CAAA modified the Act's provisions on growth allowances in nonattainment areas by (1) eliminating existing growth allowances in the nonattainment area that received a notice prior or subsequent to the Amendments that the SIP was substantially inadequate, and (2) restricting growth allowances to only those portions of nonattainment areas formally targeted as special zones for economic growth (Sections 173(b) and 173(a)(1)(B) of the CAA). Massachusetts' regulations do not contain provisions for growth allowances and are consequently consistent with the Act.

7. Massachusetts has a practice of supplying information from nonattainment NSR licenses to EPA's RACT/BACT/LAER clearinghouse in accordance with section 173(d) of the CAA.

8. Massachusetts regulation 310 CMR 7.00 appendix A, section (8)(a), establishes provisions, in accordance with section 173(a)(3) of the CAA, to ensure that owners or operators of each proposed new or modified major stationary source demonstrate, as a condition of license issuance, that all other major stationary sources under the same ownership in the State are in compliance with the CAA.

9. Massachusetts regulation 310 CMR 7.00 appendix A, section (8)(b) establishes provisions in accordance with section 173(a)(5) of the CAA that, as a prerequisite to issuing any Part D permit, require an analysis of alternative sites, sizes, production processes and environmental control techniques for proposed sources that demonstrate that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, and modification.

10. Massachusetts regulation 310 CMR 7.00 appendix A, section (8)(c) establishes provisions in accordance with section 173(a)(4) of the CAA that, as a prerequisite to issuing any Part D permit, the Administrator has not determined that the applicable implementation plan is not being adequately implemented for the proposed nonattainment area in which the proposed source is to construct or be modified.

B. General Requirements for Ozone Nonattainment NSR

EPA is not taking action today on a February 11, 2000 submittal addressing NSR in attainment areas within the Ozone Transport Region (OTR). Because Western Massachusetts is currently designated as a serious nonattainment area, these requirements are not currently relevant there. In addition, as of January 16, 2001, EPA's reinstatement of the one-hour ozone NAAQS in Eastern Massachusetts will be effective and the area will be nonattainment. Consequently, Massachusetts' SIP revisions on the OTR will also not be relevant in the near future in Eastern Massachusetts. Massachusetts is currently applying serious nonattainment NSR requirements to all subject sources statewide. EPA is reviewing the OTR revisions and will take action on them in the near future. Such action would clearly need to occur before any redesignation to attainment within Massachusetts.

The general nonattainment NSR requirements are found in sections 172 and 173 of part D of subchapter I of the Act and must be met by all nonattainment areas. The requirements for ozone nonattainment areas that supplement or supersede these requirements are found in subpart 2 of part D. In addition to requirements for ozone nonattainment areas, subpart 2 includes section 182(f), which states that requirements for major stationary sources of VOC shall apply to major stationary sources of oxides of nitrogen (NO_X) unless the Administrator makes certain determinations related to the benefits or contribution of NO_X control to air quality, ozone attainment, or ozone air quality. States were required under section 182(a)(2)(C) to adopt new NSR rules for ozone nonattainment areas by November 15, 1992.

Summary of Massachusetts' Submittal

Pursuant to section 172(c)(5) of the CAA, State implementation plans must require permits for the construction and operation of new or modified major stationary sources in nonattainment areas. The federal statutory permit requirements for ozone nonattainment areas are generally contained in revised section 173, and in subpart 2 of subchapter I, part D of the CAA. These are the minimum requirements that States must include in an approvable implementation plan. For all classifications of ozone nonattainment areas, States must adopt the appropriate major source thresholds and offset ratios, and must adopt provisions to ensure that any new or modified major stationary source of NO_X satisfies the requirements applicable to any major source of VOC, unless a special NO_X exemption is granted by the Administrator under the provision of section 182(f). For serious and severe ozone nonattainment areas, State plans must implement section 182(c)(6) with regard to modifications of major sources. The Commonwealth of Massachusetts' attainment status is discussed above.

The following paragraphs reference the serious ozone nonattainment requirements that Massachusetts was required to submit to EPA by November 15, 1992 and how Massachusetts has met those requirements.

1. Massachusetts regulation 310 CMR 7.00 appendix A, section (2), definition of ''Major Stationary Source,'' establishes provisions in accordance with the serious nonattainment area requirements provided in sections

182(c) and 182(f) of the CAA, by setting a major source threshold level of 50 TPY for VOC and for NO_X.

2. Massachusetts regulation 310 CMR 7.00 Appendix A, Section (6)(e), establishes provisions in accordance with sections 183(c)(10) and 182(f) of the CAA, by setting an offset ratio of 1.2 to 1 for major sources or major modifications of VOC or NO_X.

3. Massachusetts regulation 310 CMR 7.00 Appendix A, Section (2), definition of ''Significant,'' paragraphs (a) and (b), establishes provisions that are consistent with the ''De Minimis rule'' requirements of section 182(c)(6) of the CAA.

4. Massachusetts regulation 310 CMR 7.00 Appendix A, Sections (3)(e), (f) and (g), establish provisions that are consistent with the special rules for modifications in sections 182(c)(7) and (8) of the CAA.

C. Miscellaneous Permit Requirements

Background

Massachusetts also added or revised definitions and permitting procedures to clarify specific requirements of 310 CMR 7.00 Appendix A and to make the rule consistent with the nonattainment NSR permit requirements set forth in 40 CFR 51.165. The list of the new or revised definitions includes: Actual Emissions; Allowable Emissions; Begin Actual Construction; Building, Structure, Facility or Installation; Clean Coal Technology; Clean Coal Technology Demonstration Project; Coastal Waters; Navigable Rivers and Lakes; Commence; Construction; Corresponding Onshore Area; Electric Utility Steam Generating Unit; Generating unit; Emissions Unit; Energy Input; Fossil Fuel Fired Boiler; Fossil Fuel Fired Electric Plant; Fugitive Emissions; Indian Governing Body; Indian Tribe; Lowest Achievable Emission Rate (LAER); Major Modification; Major Stationary Source; Necessary Preconstruction Approvals or Permits; Net Emissions Increase; Outer Continental Shelf; Outer Continental Shelf Source; Pollution Control Project; Reasonable Further Progress; Repowering; Representative Actual Annual Emissions; Secondary Emissions; Significant; Stationary Source; Temporary Clean Coal Technology Demonstration Project; Nonroad Engine; Nonroad Vehicle; Procedures for Shutdown Credits; Procedures for Source Obligation. For further details concerning the revisions to Massachusetts' 310 CMR 7.00 Appendix A and EPA's evaluation, please refer to the memorandum from Brendan McCahill, Environmental Engineer, to Steven Rapp, Manager, Air Permits Program entitled, ''Technical Support Document—Massachusetts New Source Review Revisions,'' dated October 18, 2000.

Final Action

EPA is approving the revisions to Massachusetts 310 CMR 7.00 Appendix A, ''Emission Offsets and Nonattainment Review.'' The Agency has reviewed this request for revision of the Federally-approved State implementation plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. These revisions meet the nonattainment area NSR provisions of Part D of the CAA.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This action will be effective December 26, 2000 without further notice unless the Agency receives relevant adverse comments by November 27, 2000.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 26, 2000 and no further action will be taken on the proposed rule.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies 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.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency

promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 26, 2000. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: October 19, 2000.

Mindy S. Lubber,

Regional Administrator, EPA-New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(127) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(127) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on July 15, 1994 and April 14, 1995.

(i) Incorporation by reference.

(A) Massachusetts Amendments to 310 CMR 7.00 Appendix A entitled, ''Emission Offsets and Nonattainment Review,'' effective July 1, 1994.

(B) Massachusetts Amendments to 310 CMR 7.00 Appendix A entitled, ''Emission Offsets and Nonattainment Review'' paragraph (3)(g) effective July 1, 1994.

(ii) Additional materials.

(A) Letters from the Massachusetts Department of Environmental Protection dated July 15, 1994 and March 29, 1995 submitting revisions to the Massachusetts State Implementation Plan.

For the State of Massachusetts:

3. In § 52.1167 the Table 52.1167 is amended by adding in numerical order a new state citation for ''310 CMR 7.00 Appendix A'' to read as follows:

§ 52.1167 EPA-approved Massachusetts State regulations.

* * * * *

TABLE 52.1167.—EPA-APPROVED MASSACHUSETTS REGULATIONS

State citation	Title/subject	Date submitted by state	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
*	*	*	*	*	*	*
310 CMR 7.00: ..... Appendix A	Emission Offsets and Nonattainment Review.	7/15/94 and 4/14/95	10/27/00	[Insert *FR* citation from published date].	(c)(127)	Approving 1990 CAAA revisions and general NSR permit requirements
*	*	*	*	*	*	*

[FR Doc. 00–27657 Filed 10–26–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301073; FRL–6751–1]

RIN 2070–AB78

(N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time–limited tolerances for combined residues of the herbicide (N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-N-methylethyl benzenamine moiety in or on wheat grain at 1 part per million (ppm), wheat forage at 10 ppm, wheat hay at 2 ppm, wheat straw at 0.5 ppm, meat, kidney and fat of cattle, goats, horses, hogs, and sheep at 0.05 ppm and meat by–products (other than kidney) of cattle, goats, horses, hogs, and sheep at 0.1 ppm for an additional two–year period. These tolerances will expire and are revoked on July 31, 2003. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on wheat. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time–limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act.

DATES: This regulation is effective October 27, 2000. Objections and requests for hearings, identified by docket control number OPP–301073, must be received by EPA on or before December 26, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301073 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number:(703) 305–6463; and e-mail address: Madden.Barbara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301073. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of August 6, 1999 (64 FR 42839) (FRL–6091–9), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established time–limited tolerances for the combined residues of (N-(4-fluorophenyl)-N-(1- methylethyl)-2-[[-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-N-methylethyl benzenamine, in or on wheat grain at 1 ppm, wheat forage at 10 ppm, wheat hay at 2 ppm, wheat straw at 0.5 ppm, meat, kidney, and fat of cattle, goats, horses, hogs, and sheep at 0.05 ppm and meat by–products (other than kidney) of cattle, goats, horses, hogs, and sheep at 0.1 ppm, with an expiration date of July 31, 2001. EPA established these tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time–limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of (N-(4-fluorophenyl)-N-(1-methylethyl)-2-[-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide for this year's growing season due to the lack of registered pesticides that provide adequate control of annual ryegrass in wheat. Italian ryegrass or annual ryegrass is one of the most difficult to control weeds in wheat. It is extremely competitive with wheat; as few as 20 plants per square meter can reduce wheat yield by 30%. Ryegrass is not a new species to the Pacific Northwest. It has been effectively controlled in past years by herbicides such as diclofop. However, resistance to diclofop was first identified in Oregon in the early 1980s. Diclofop is now ineffectual against controlling annual ryegrass in wheat. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of (N-(4-fluorophenyl)-N- (1-methylethyl)-2-[[-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide on wheat for control of annual ryegrass in Idaho, Oregon, and Washington.

EPA assessed the potential risks presented by residues of (N-(4-fluorophenyl)-N-(1-methylethyl)-2-[-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in or on wheat. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of August 6, 1999 (64 FR 42839) (FRL–6091–9). Based on that data and information considered, the Agency reaffirms that extension of the time–limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time–limited tolerances are extended for an additional two–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although

these tolerances will expire and are revoked on July 31, 2003, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on wheat grain, wheat forage, wheat hay, wheat straw, and meat, fat, meat by–products, and kidney of cattle, goats, horses, hogs, and sheep after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301073 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before December 26, 2000.

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

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

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

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

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

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301073, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

IV. Regulatory Assessment Requirements

This final rule establishes time–limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* October 4, 1993 (58 FR 51735). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* May 19, 1998 (63 FR 27655); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low–Income Populations* February 16, 1994 (59 FR 7629); or require OMB review or any

Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* April 23, 1997 (62 FR 19885). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* August 10, 1999 (64 FR 43255). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: October 18,2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.527 [Amended]

2. In § 180.527, amend paragraph (b) by revising the date ''7/31/00, '' to read ''7/31/03,'' for wheat grain, wheat forage, wheat hay, wheat straw, and meat, fat, meat by–products, and kidney of cattle, goats, hogs, horses and sheep.''

[FR Doc. 00–27662 Filed 10–26–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301072; FRL–6750–5]

RIN 2070–AB78

Azoxystrobin; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for residues of the fungicide azoxystrobin methyl (*E*)-2-(2-(6-(2-cyanophenoxy) pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate and *Z*-isomer of azoxystrobin, methyl(*Z*)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3 methoxyacrylate in or on watercress at 1.0 part per million (ppm) for an additional 2–year period. This tolerance will expire and is revoked on October 30, 2002. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on watercress. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act.

DATES: This regulation is effective October 27, 2000. Objections and requests for hearings, identified by docket control number OPP–301072, must be received by EPA on or before December 26, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301072 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–9364; and e-mail address: pemberton.libby@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining

whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

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

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301072. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of May 12, 1998 (63 FR 91) (FRL–5787–8), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the residues of azoxystrobin and its *z*-isomer in or on watercress at 1.0 ppm, with an expiration date of June 30, 1999. EPA established the tolerance because section 408(l)(6) of the FFDCA, requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or period for public comment. This tolerance was subsequently extended until October 30, 2000 in the **Federal Register** of May 12, 1999 (64 FR 91) (FRL–6074–2).

EPA received a request to extend the use of azoxystrobin on watercress for this year's growing season due to the continuation of the emergency situation. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of azoxystrobin on watercress for control of *cercospora* leaf spot disease in Florida.

EPA assessed the potential risks presented by residues of azoxystrobin in or on watercress. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of May 12, 1998 (63 FR 91) (FRL–5787–8). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 2–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on October 30, 2002, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on watercress after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301072 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before December 26, 2000.

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

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

number for the Office of the Hearing Clerk is (202) 260–4865.

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

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

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

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301072, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

IV. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: October 12, 2000.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

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

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

§ 180.507 [Amended]

2. In § 180.507, by amending the table in paragraph (b), by revising the expiration/revocation date for Watercress from ''10/30/00'' to read ''10/30/02''.

[FR Doc. 00–27661 Filed 10–26–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6888–7]

Arizona: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Arizona has applied to EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed for final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize Arizona's changes to their hazardous waste program will take effect as provided below. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect. A Notice of Proposed Rulemaking is published in this **Federal Register** which authorizes the incorporation of responses to comments or changes to the Final Rule.

DATES: This final authorization will become effective on December 26, 2000 unless EPA receives adverse written comment by November 27, 2000. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Send written comments to Lisa McClain-Vanderpool, U.S. EPA, Waste Management Division, 75 Hawthorne Street, (mailcode WST–3), San Francisco, CA 94105. Copies of the Arizona program revision application and the materials which EPA used in evaluating the revisions are available for inspection and copying from 9:00–4:00 at the following addresses: Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012 and U.S. EPA Region 9, Library, 75 Hawthorne Street, 13th Floor, San Francisco, CA 94105; phone (415) 744–1510.

FOR FURTHER INFORMATION CONTACT: Lisa McClain-Vanderpool at (415) 744–2086.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

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

B. What Decisions Have We Made in this Rule?

We conclude that Arizona's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Arizona final authorization to operate its hazardous waste program with the changes described in the authorization application. Arizona has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations on its authority retained by EPA in accordance with RCRA, including the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for such requirements and prohibitions. Thus, EPA will implement those requirements and prohibitions in Arizona, including issuing permits, until the State is granted authorization to do so.

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

The effect of this decision is that a facility in Arizona subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent federal requirements in order to comply with RCRA. Arizona continues to have enforcement responsibilities under its state law to pursue violations of its hazardous waste program. EPA continues to have independent authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, the authority to:

- Do inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements (including state-issued statutes and regulations that are authorized by EPA and any applicable federally-issued statutes and regulations) and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

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

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

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

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

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the state program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on

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

F. What Has Arizona Previously Been Authorized For?

Arizona initially received Final Authorization on November 20, 1985 to implement its base hazardous waste management program. Arizona received authorization for revisions to its program on August 6, 1991, July 13, 1992, November 23, 1992, October 27, 1993, June 12, 1995, May 6, 1997 and October 28, 1998 (63 FR 57605–57608 effective December 28, 1998).

Subsequent of these authorizations the State of Arizona has revised its hazardous waste program, making conforming changes to its regulations in line with the Federal requirements. The EPA has reviewed these changes and has made an immediate final decision, subject to receipt of adverse comment, that Arizona's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for these revisions.

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

On May 25, 2000, Arizona submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Arizona's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. These provisions are analogous to the indicated RCRA statutory provisions or Federal RCRA regulations as of September 9, 1998. The Arizona provisions are from the RCRA Cluster VII and VIII hazardous waste regulations unless otherwise stated. Therefore, upon authorization, the following Arizona hazardous waste requirements that are either equivalent or more stringent than the corresponding federal requirements will apply in lieu of the federal requirements:

State requirement	Federal requirement
A.A.C. R18–8–268 amended June 4, 1998	Land Disposal Restrictions Phase III—Emergency Extension of the K066 Capacity Variance; 62 FR 1992, January 14, 1997. (HSWA) (Checklist 155).
A.A.C. R–18-8–8–260.A, B, C, E & F; R–18–8–261.A & B; R–18–8–262.A & B; R–18–8–263.A; R–18–8–264.A & C; R–18–8–265.A & C; R–18–8–266.A; R–18–8–270.A & C; all amended June 4, 1998.	Military Munitions Rule 62 FR 6622, February 12, 1997. (HSWA) (Checklist 156).
A.A.C. R18–8–261.A & B and A.A.C. R18–8–268, amended June 4, 1998.	Land Disposal Restrictions—Phase IV 62 FR 25988, May 12, 1997. (HSWA) (Checklist 157).
A.A.C. R18–8–260.A, B& C; R–18–8–264.A; R–18–8–266.A, amended June 4, 1998.	Testing and Monitoring Activities Amendment III 62 FR 32452, June 13, 1997. (Non-HSWA) (Checklist 158)
A.A.C. R18–8–261.A & B; A.A.C. R18–8–268, amended June 4, 1998	Conformance with Carbamate Vacatur 62 FR 32974, June 17, 1997. (HSWA) (Checklist 159)
A.A.C. R18–8-268, amended November 15, 1999	Land Disposal Restrictions—Phase III—Emergency Extension of the K088 Capacity Variance, Amendment (HSWA) 62 FR 37694, July 14, 1997. (Checklist 160) Emergency Revision of the Carbamate Land Disposal Restrictions, 62 FR 45568, August 28, 1997. (HSWA) (Checklist 161) Clarification of Standards for Hazardous Waste LDR Treatment Variances, 62 FR 64504, December 5, 1997 (HSWA) (Checklist 162).
A.A.C. R18–8–264.A, R18–8–265.A and R18–8–270.A, amended November 15, 1999.	Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Classification and Technical Amendment, 62 FR 64636, December 8, 1997 (HSWA) (Checklist 163).
A.A.C. R18–8–261.A & B, amended November 15, 1999	Kraft Mill Steam Stripper Condensate Exclusion, 63 FR 18504, April 15, 1998 (Non-HSWA) (Checklist 164).
A.A.C. R18–8–261 A&b, R18–8–268, amended November 15, 1999 .... However, Arizona is not currently incorporating the mineral processing secondary materials exclusion portion of this rule (Checklist 167 D).	Land Disposal Restrictions Phase IV—Treatment Standards Metal Wastes and Mineral Processing Wastes; Hazardous Soils Treatment Standards and Exclusions; Corrections; Bevill Exclusion Revisions and Clarifications; Exclusion of Recycled Wood Preserving Waste Waters, 63 FR 28556, May 26, 1998 (HSWA/Non-HSWA) (Checklists 167 A, B, C, E and F).
A.A.C. R18–8–261 A&B, R18–8–270.A, amended November 15, 1999	Hazardous Waste Combustors; Revised Standards, 63 FR 33782, June 19, 1998 (Non-HSWA) (Checklist 168).
A.A.C. R18–8–268, amended November 15, 1999	Land Disposal Restrictions Phase IV—Zinc Micronutrient Fertilizer, Administrative Stay, 63 FR 46332, August 31, 1998 (HSWA) (Checklist 170). Emergency Revision of the Land Disposal Restrictions Treatment Standards for Listed hazardous Waste from Carbamate Production, 63 FR 47410, September 4, 1998 (HSWA) (Checklist 171). Land Disposal Restrictions Phase IV—Extension of Compliance Date for Characteristics Slags, September 9, 1998 (HSWA) (Checklist 172).

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

Arizona has adopted in whole the Federal revisions cited above. There are no significant differences between the Federal rules and the revised State rules being authorized today.

I. Who Handles Permits After the Authorization Takes Effect?

Arizona will issue permits for all the provisions for which it is authorized and will administer the permits it issues. ADEQ and EPA have agreed to a joint permitting process for RCRA permits for those provisions of HSWA for which ADEQ does not have authorization. As ADEQ receives authorization for additional provision of HSWA, EPA will suspend issuance of Federal permits in the state related to those provisions.

Whenever EPA adopts standards under HSWA for activities or wastes not currently covered by the authorized program, EPA may process RCRA permits in the State for the new or revised HSWA processes until ADEQ has received final authorization for the new or revised HSWA standards. At the time the ADEQ program is authorized for the new or revised HSWA standards, EPA will suspend any permitting activities in those areas. EPA will also transfer any pending permit applications, completed permits or pertinent file information to ADEQ within thirty days of the authorization of new or revised elements of the ADEQ program.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in Arizona?

Arizona is not authorized to carry out its hazardous waste program in Indian Country within the State, which includes the Ak Chin Indian Community of Papago Indians, Cocopah Tribe of Arizona, Fort McDowell Mohave-Apache Indian Community, Gila River Pima-Maricopa Indian Community, Havasupai Tribe, Hopi Tribe of Arizona, Hualapai Indian Tribe, Kaibab Band of Paiute Indians, Pascua Yaqui Tribe of Arizona, Salt River Pima-Maricopa Indian Community, San Carlos Apache Tribe, San Juan Southern Paiute Tribe, Tohono O'odham Nation, Tonto Apache Tribe, White Mountain Apache Tribe of Fort Apache Reservation, Yavapai-Apache Nation of Camp Verde Reservation, Yavapai-Prescott Tribe, Colorado River Indian Tribes, Navajo Nation and Fort Mojave Indian Tribe. Therefore, this action has no effect on Indian Country. EPA will continue to implement and administer the RCRA program in these lands.

K. What Is Codification and Is EPA Codifying Arizona's Hazardous Waste Program As Authorized in This Rule?

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

L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes state requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by state law. Accordingly, I certify that this action 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.*). Because this action authorizes pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action 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 (64 FR 43255, August 10, 1999), because it merely authorizes state requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks.

Under RCRA section 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective December 26, 2000.

List of Subjects in 40 CFR Part 271

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

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

Dated: September 27, 2000.

Felicia Marcus,

Regional Administrator, Region 9.

[FR Doc. 00–27142 Filed 10–26–00; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–2

[FPMR Amendment A–56]

RIN 3090–AH32

Payments to GSA for Supplies and Services Furnished Government Agencies

AGENCY: Office of Governmentwide Policy.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is removing Federal Property Management Regulations (FPMR) coverage on Payments to GSA for Supplies and Services Furnished Government Agencies. Adequate coverage exists in the Department of Treasury's regulations. This action eliminates unnecessary coverage in the FPMR.

EFFECTIVE DATE: This final rule is effective October 27, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Kosar, 202–501–2029. E-mail: mike.kosar@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

In an effort to improve GSA's external directives system, GSA has undertaken a review of the Federal Property Management Regulations (FPMR). The FPMR prescribes Governmentwide regulations for real property, personal property, and other programs and activities within GSA's regulatory authority. As part of this review, GSA is removing FPMR 101–2 because it is procedural rather than regulatory. Current guidance issued by the Department of Treasury may be found in the Treasury Financial Manual (TFM) Vol. 1, Part 6, Chapter 4000.

B. Executive Order 12866

The General Services Administration has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866.

C. Regulatory Flexibility Act

A regulatory flexibility analysis is not required under the Regulatory Flexibility Act, 4 U.S.C. 601, *et seq.*, because there is no requirement that the rule be published in the **Federal Register** for notice and comment.

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 under 44 U.S.C. 501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also 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 Part 101–2

Government property management.

PART 101–2—[REMOVED]

Accordingly, under the authority of Sec. 205(c), 63 Stat. 390 (40 U.S.C. 496(c)), amend 41 CFR Chapter 101 by removing part 101–2.

Dated: October 23, 2000.

David J. Barram,

Administrator of General Services.

[FR Doc. 00–27653 Filed 10–26–00; 8:45 am]

BILLING CODE 6820–34–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–B–7400]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1-percent-annual-chance) Flood Elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified Base Flood Elevations for new buildings and their contents.

DATES: These modified Base Flood Elevations are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified Base Flood Elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified Base Flood Elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified Base Flood Elevation determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified Base Flood Elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in Base Flood Elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No

environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified Base Flood Elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa	Unincorporated Areas.	April 7, 2000, April 14, 2000, *Arizona Republic*.	The Honorable Andrew Kunasek, Chairperson, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	Feb. 29, 2000	040037
Pima	City of Tucson	April 18, 2000, April 25, 2000, *Tucson Citizen*.	The Honorable Robert E. Walkup, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726.	July 24, 2000	040076
Pima	Unincoporated Areas.	April 18, 2000, April 25, 2000, *Arizona Daily Star*.	The Honorable Sharon Bronson, Chairperson, Pima County Board of Supervisors, 130 West Congress, 11th Floor, Tucson, Arizona 85701.	July 24, 2000	040073
Arkansas: Sebastian.	City of Fort Smith	April 21, 2000, April 28, 2000, *Southwest Times Record*.	The Honorable Ray Baker, Mayor, City of Fort Smith, P.O. Box 1908, Fort Smith, Arkansas 72902.	Mar. 21, 2000	055013
California:					
Contra Costa	City of Walnut Creek.	April 5, 2000, April 12, 2000, *Contra Costa Times*.	The Honorable Charlie Abrams, Mayor, City of Walnut Creek, 1666 North Main Street, Walnut Creek, California 94596–8039.	Mar. 8, 2000	065070
Riverside	City of Corona	April 19, 2000, April 26, 2000, *The Press Enterprise*.	The Honorable Jeffrey P. Bennett, Mayor, City of Corona, P.O. Box 940, Corona, California 92882-0940.	Mar. 13, 2000	060250
Riverside	City of Norco	April 19, 2000, April 26, 2000, *The Press Enterprise*.	The Honorable Frank Hall, Mayor, City of Norco, P.O. Box 428, Norco, California 92860–0428.	Mar. 13, 2000	060256
Colorado: Arapahoe.	Unincorporated Areas.	April 20, 2000, April 27, 2000, *The Villager*.	The Honorable Steve Ward, Chairperson, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166.	Mar. 13, 2000	080011
Nebraska: Thurston.	Village of Pender	April 20, 2000, April 27, 2000, *Pender Times*.	The Honorable Frank Appleton, Chairperson, Village of Pender Board of Trustees, P.O. Box S, Pender, Nebraska 68047.	July 26, 2000	310221
New Mexico: Bernalillo.	City of Albuquerque.	April 6, 2000, April 13, 200, *Albuquerque Journal*.	The Honorable Jim Baca, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	Feb. 29, 2000	350002
Okalahoma: Wagoner.	City of Coweta	April 19, 2000, April 26, 2000, *Coweta American*.	The Honorable Mike Dill, Mayor, City of Coweta, City Hall, P.O. Box 850, Coweta, Oklahoma 74429.	Mar. 10, 2000	400216
Texas:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Tarrant	City of Fort Worth	April 20, 2000, April 27, 2000, *The Star-Telegram*.	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	Mar. 24, 2000	480596
Tarrant	City of Keller	March 28, 2000, April 4, 2000, *The Keller Citizen*.	The Honorable Dave Phillips, Mayor, City of Keller, P.O. Box 770, Keller, Texas 76244.	July 3, 2000	48602
Williamson	City of Austin	April 7, 2000, April 14, 2000, *Austin American-Statement*.	The Honorable Kirk Watson, Mayor, City of Austin, 124 West Eighth Street, Suite 103, Austin 78701.	Mar. 1, 2000	480624
Williamson	Unincorporated Areas.	April 7, 2000, April 14, 2000, *Austin American-Stateman*.	The Honorable John Doerffler, County Judge, Williamson County, 710 Main Street, Suite 201, Georgetown, Texas 78626.	Mar. 1, 2000	481079

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: October 16, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–27639 Filed 10–26–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–B–7403]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa	City of Glendale	July 27, 2000, August 3, 2000, *Arizona Republic*.	The Honorable Elaine Scruggs, mayor, City of Glendale, 5850 West Glendale Avenue, Glendale, Arizona 85301.	July 5, 2000	040045
Maricopa	City of Glendale	August 31, 2000, September 7, 2000, *Arizona Republic*.	The Honorable Elaine Scruggs, mayor, City of Glendale, 5850 West Glendale, Glendale, Arizona 85301.	August 10, 2000	040045
Maricopa	City of Peoria	July 27, 2000, August 3, 2000, *Arizona Republic*.	The Honorable John Keegan, mayor, City of Peoria, 8401 West Monroe Street, Peoria, Arizona 85345.	July 5, 2000	040050
Maricopa	City of Phoenix	July 27, 2000, August 3, 2000, *Arizona Republic*.	The Honorable Skip Rimsza, mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003.	July 5, 2000	040051
Maricopa	City of Phoenix	August 31, 2000, September 7, 2000, *Arizona Republic*.	The Honorable Skip Rimsza, mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003.	August 10, 2000	040051
Maricopa	City of Phoenix	September 14, 2000, September 21, 2000, *Arizona Republic*.	The Honorable Skip Rimsza, mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003.	August 22, 2000	040051
Maricopa	Unincorporated Areas.	August 31, 2000, September 7, 2000, *Arizona Republic*.	The Honorable Andrew Kunasek, chairperson, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	August 10, 2000	040037
Mohave	Unincorporated Areas.	July 6, 2000, July 13, 2000, *Kingman Daily Miner*.	The Honorable Buster Johnson, chairperson, Mohave County Board of Supervisors, 809 East Beale Street, Kingman, Arizona 86401–5924.	October 20, 2000	040058
Pima	City of Tucson	July 6, 2000, July 13, 2000, *Arizona Daily Star*.	The Honorable Robert E. Walkup, mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726.	June 16, 2000	040076
Pima	City of Tucson	July 27, 2000, August 3, 2000, *Tucson Citizen*.	The Honorable Robert E. Walkup, mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726.	July 10, 2000	040076
Pima	City of Tucson	August 29, 2000, September 5, 2000, *Tucson Citizen*.	The Honorable Robert E. Walkup, mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726.	August 8, 2000	040078
Pima	City of Tucson	August 30, 2000, September 6, 2000, *Tucson Citizen*.	The Honorable Robert E. Walkup, mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726.	July 26, 2000	040076
Pima	Unincorporated Areas.	July 6, 2000, July 13, 2000, *Arizona Daily Star*.	The Honorable Sharon Bronson, chairperson, Pima County, Board of Supervisors, 130 West Congress, 11th Floor Tucson, Arizona 85701.	June 16, 2000	040073
California:					
Mendocino	Unincorporated Areas.	September 22, 2000, September 29, 2000, *Ukia Daily Journal*.	The Honorable Michael Delbar, chairperson, Mendocino County, Board of Supervisors, 501 Low Gap Road, Room 1090, Ukiah, California 95482.	August 21, 2000	060183
Napa	Unincorporated Areas.	June 29, 2000, July 6, 2000, *Napa Valley Register*.	The Honorable Jay Hull, Administrator, Napa County, 1195 Third Street, Third Floor, Room 310, Napa, California 94559.	June 14, 2000	060205
Orange	City of Irvine	June 9, 2000, June 16, 2000, *Orange County Register*.	The Honorable Christina Shea, mayor, City of Irvine, P.O. Box 19575, Irvine, California 92623–9575.	May 26, 2000	060222

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Orange	City of Laguna Hills.	June 9, 2000, June 16, 2000, *Orange County Register*.	The Honorable Joel Lautenschleger, mayor, City of Laguna Hills, 25201 Paseo de Alicia, Suite 150, Laguna Hills, California 92653.	May 26, 2000	060760
Riverside	City of Moreno Valley.	September 22, 2000, September 29, 2000, *Valley Times*.	The Honorable Richard Stewart, mayor, City of Moreno Valley, 14177 Frederick Street, Moreno Valley, California 92552.	August 31, 2000	065074
Sacramento	City of Folsom	June 28, 2000, July 5, 2000, *The Folsom Telegraph*.	The Honorable Stephen Miklos, mayor, City of Folsom, 50 Natoma Street, Folsom, California 95630.	June 8, 2000	060263
Sacramento	City of Sacramento.	September 13, 2000, September 20, 2000, *Sacramento Bee*.	The Honorable Joe Serna, Jr., mayor, City of Sacramento, City Hall, 915 I Street, Room 205, Sacramento, California 95814.	August 21, 2000	060266
Sacramento	Unincorporated Areas.	August 22, 2000, August 29, 2000, *Sacramento Bee*.	The Honorable Roger Dickinson, chairperson, Sacramento County, Board of Supervisors, 700 H Street, Room 2450, Sacramento, California 95814.	August 2, 2000	060262
Sacramento	Unincorporated Areas.	September 14, 2000, September 21, 2000, *Sacramento Bee*.	The Honorable Roger Dickinson, chairperson, Sacramento County, Board of Supervisors, 700 H Street, Room 2450, Sacramento, California 95814.	August 23, 2000	060262
San Diego	City of Oceanside	September 12, 2000, September 19, 2000, *North County Times*.	The Honorable Dick Lyon, mayor, City of Oceanside, 300 North Coast Highway, Oceanside, California 92054–2885.	August 25, 2000	060294
Colorado:					
Arapahoe	City of Aurora	August 10, 2000, August 17, 2000, *Aurora Sentinel*.	The Honorable Paul Tauer, mayor, City of Aurora, 1470 South Havana Street, Aurora, Colorado 80012.	July 19, 2000	080002
El Paso	City of Colorado Springs.	August 15, 2000, August 22, 2000, *The Gazette*.	The Honorable MaryLou Makepeace, mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901–1575.	July 28, 2000	080060
Mesa	City of Grand Junction.	August 17, 2000, August 24, 2000, *Daily Sentinel*.	The Honorable Gene Kinsey, mayor, City of Grand Junction, 250 North Fifth Street, Grand Junction, Colorado 81501–2668.	November 22, 2000	080117
Mesa	Unincorporated Areas.	August 17, 2000, August 24, 2000, *Daily Sentinel*.	The Honorable Doralyn B. Genova, chairperson, Mesa County, Board of Commissioners, P.O. Box 20000, Grand Junction, Colorado 81502–5001.	November 22, 2000	080115
Weld	Town of Windsor	August 31, 2000, September 7, 2000 *Windsor Beacon*.	The Honorable Wayne Miller, mayor, Town of Windsor, 301 Walnut Street, Windsor, Colorado 80550.	December 6, 2000	080264
Weld	Unincorporated Areas.	August 31, 2000, September 7, 2000, *Greeley Daily Tribune*.	The Honorable Barbara Kirkmeyer, chairperson, Weld County, Board of Commissioners, P.O. Box 758 Greeley, Colorado 80632–0758.	December 6, 2000	080266
Idao:					
Boise	City of Idaho City	August 18, 2000, August 25, 2000 *The Idaho Statesman*.	The Honorable Thomas D. Corum, mayor, City of Idaho City, P.O. Box 130, Idaho City, Idaho 83631.	July 28, 2000	160222
Boise	Unincorporated Areas.	August 18, 2000, August 25, 2000, *The Idaho Statesman*.	The Honorable John S. Foard, Sr., chairperson, Boise County, Board of Commissioners, P.O. Box BC, Idaho City, Idaho 83631.	July 28, 2000	160205
Teton	Unincorporated Areas.	August 17, 2000, August 24, 2000, *Teton Valley News*.	The Honorable Brent Robson, chairperson, Teton County, Board of Commissioners, 89 North Main, Driggs, Idaho 83422.	August 2, 2000	160230
Nevada:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Clark	Unincorporated Areas.	July 21, 2000, July 28, 2000, *Las Vegas Review-Journal*.	The Honorable Bruce L. Woodbury, chairperson, Clark County, Board of Commissioners, P.O. Box 551601, Las Vegas, Nevada 89155–1601.	June 28, 2000	320003
Clark	Unincorporated Areas.	September 21, 2000, September 28, 2000, *Las Vegas Review-Journal*.	The Honorable Bruce L. Woodbury, chairperson, Clark County, Board of Commissioners, P.O. Box 551601 Las Vegas, Nevada 89155–1601.	August 29, 2000	320003
Elko	City of Elko	August 16, 2000, August 23, 2000, *Elko Daily Free Press*.	The Honorable Mike Franzoia, mayor, City of Elko, 1751 College Avenue, Elko, Nevada 89801.	July 21, 2000	320010
New Mexico:					
Bernalillo	City of Albuquerque.	August 9, 2000, August 16, 2000, *Albuquerque Journal*.	The Honorable Jim Baca, mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, Nex Mexico 87103.	July 13, 2000	350002
New Mexico:					
Bernalillo	City of Albuquerque.	August 10, 2000, August 17, 2000, *Albuquerque Journal*.	The Honorable Jim Baca, mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	July 13, 2000	350002
Oklahoma:					
Tulsa	City of Bixby	September 15, 2000, September 22, 2000, *Tulsa World*.	The Honorable Joe Williams, mayor, City of Bixby, 116 West Needles Avenue, Bixby, Oklahoma 74008.	December 21, 2000	400207
Tulsa	City of Tulsa	September 15, 2000, September 22, 2000, *Tulsa World*.	The Honorable M. Susan Savage, mayor, City of Tulsa, City Hall, 200 Civic Center, Tulsa, Oklahoma 74103.	December 21, 2000	405381
Tulsa	Unincorporated Areas.	September 15, 2000, September 22, 2000, *Tulsa World*.	The Honorable Wilbert E. Collins, Sr., chairperson, Tulsa County, Board of Commissioners, 500 South Denver, Tulsa, Oklahoma 74103.	December 21, 2000	400462
Oregon:					
Clackamas	City of Milwaukee	September 15, 2000, September 22, 2000, *The Oregonian*.	The Honorable Carolyn Tomeri, mayor, City of Milwaukee, City Hall, 10722 Southeast Main Street, Milwaukee, Oregon 97222.	December 21, 2000	410019
Clackamus	Unincorporated Areas.	September 15, 2000, September 22, 2000, *The Oregonian*.	The Honorable Bill Kennemer, chairperson, Clackamus County, Board of Commissioners, 906 Main Street, Oregon City, Oregon 97045.	December 21, 2000	415588
Multnomah	City of Portland	September 15, 2000, September 22, 2000, *The Oregonian*.	The Honorable Vera Katz, mayor, City of Portland, 1221 Southwest Fourth Avenue, Portland, Oregon 97204.	December 21, 2000	410183
Multnomah	Unincorporated Areas.	September 15, 2000, September 22, 2000, *The Oregonian*.	The Honorable Beverly Stein, chairperson, Multnomah County, Board of Commissioners, 1120 Southwest Fifth Avenue, Room 1515, Portland, Oregon 97204.	December 21, 2000	410179
Texas:					
Brazos	City of College Station.	August 3, 2000, August 10, 2000, *Bryan-College Station Eagle*.	The Honorable Lynn McIlhaney, mayor, City of College Station, P.O. Box 9960, College Station, Texas 77842–0960.	July 10, 2000	480083
Collin	City of Frisco	July 28, 2000/August 4, 2000, *Frisco Enterprise*.	The Honorable Kathy Seei, mayor, City of Frisco, P.O. Box 1100, Frisco, Texas 75034.	July 5, 2000	480134
Collin	City of Plano	August 16, 2000, August 23, 2000, *Plano Star Courier*.	The Honorable Jeran Akers, mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	July 25, 2000	480140
Collin	Unincorporated Areas.	August 16, 2000, August 23, 2000, *Plano Star Courier*.	The Honorable Ron Harris, Collin County Judge, 210 South McDonald Street, McKinney, Texas 75086–0358.	July 25, 2000	480130

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Dallas	City of Dallas	September 19, 2000, September 26, 2000, *Dallas Morning News*.	The Honorable Ron Kirk, mayor, City of Dallas, City Hall, 150 Marilla Street, Dallas, Texas 75201.	August 24, 2000	480171
Dallas	City of Richardson.	August 3, 2000, August 10, 2000 *Richardson Daily News*.	The Honorable Gary Slagel, mayor, City of Richardson, P.O. Box 830309, Richardson, Texas 75083–0309.	November 8, 2000	480184
Denton	City of Denton	August 10, 2000, August 17, 2000 *Denton Record-Chronicle*.	The Honorable Euline Brock, mayor, City of Denton, 215 East Mckinney Street, Denton, Texas 76201.	July 14, 2000	480194
Harris	Unincorporated Areas.	August 29, 2000, September 5, 2000 *Houston Chronicle*.	The Honorable Robert Eckels, Harris County Judge, 1001 Preston Street, Suite 911, Houston, Texas 77002.	August 14, 2000	480287
Montgomery	Unincorporated Areas.	September 7, 2000, September 14, 2000 *Conroe Courier*.	The Honorable Alan Sadler, Montgomery County Judge, 301 North Thompson Street, Suite 210, Conroe, Texas 77301.	December 13, 2000 ..	480483

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 20, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–27641 Filed 10–26–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR part 65

[Docket No. FEMA–B–7402]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1-percent-annual-chance) Flood Elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified Base Flood Elevations for new buildings and their contents.

DATES: These modified Base Flood Elevations are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified Base Flood Elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified Base Flood Elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified Base Flood Elevation determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified Base Flood Elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in Base Flood Elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified Base Flood Elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Gila	Town of Payson	June 6, 2000, June 13, 2000, *Payson Roundup*.	The Honorable Vernon M. Stiffler, Mayor, Town of Payson, 303 North Beeline Highway, Payson, Arizona 85541–4306.	May 18, 2000	040107
Mohave	Unincorporated Areas.	May 3, 2000, May 10, 2000, *Kingman Daily Minor*.	The Honorable Buster Johnson, Chairman, Mohave County Board of Supervisors, 809 East Beale Street, Kingman, Arizona 86401–5924.	Oct. 20, 2000	040058
Navajo	Unincorporated Areas.	May 17, 2000, May 24, 2000, *Holbrook Tribune News*.	The Honorable Tommy Thompson, Chairperson, Navajo County Board of Supervisors, P.O. Box 668, Holbrook, Arizona 86025.	April 20, 2000	040066
Pima	City of Tucson	June 20, 2000, June 27, 2000, *Arizona Daily Star*.	The Honorable Robert Walkup, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726.	May 31, 2000	040076
Arkansas: Crawford.	Unincorporated Areas.	June 7, 2000, June 14, 2000, *Crawford County Courier*.	The Honorable Jerry Williams, Crawford County Judge, Crawford County Courthouse, 300 Main Street, Room 4, Van Buren, Arkansas 72956–5798.	Sept. 12, 2000	050428
California:					
Alameda	City of Fremont	June 1, 2000, June 8, 2000, *The Argus*.	The Honorable Gus Morrison, Mayor, City of Fremont, P.O. Box 5006, Fremont, California 94537.	April 25, 2000	065028
Lake	Unincorporated Areas.	June 14, 2000, June 21, 2000, *Lake County Record Bee*.	The Honorable D. W. Merriman, Chairperson, Lake County Board of Supervisors, 255 North Forbes Street, Lakeport, California 95453.	May 25, 2000	060090
Colorado:					
Adams	City of Northglenn	May 18, 2000, May 25, 2000, *Northglenn-Thornton Sentinel*.	The Honorable Don Parsons, Mayor, City of Northglenn, P.O. Box 330061, Northglenn, Colorado 80233–8061.	Aug. 23, 2000	080257
Adams	City of Thornton	May 18, 2000, May 25, 2000, *Northglenn-Thornton Sentinel*.	The Honorable Noel Busck, Mayor, City of Thornton, 9500 Civic Center Drive, Thornton, Colorado 80229.	Aug. 23, 2000	080007
Missouri: St. Charles.	City of O'Fallon	June 9, 2000, June 16, 2000, *St. Charles Journal*.	The Honorable Paul Renaud, Mayor, City of O'Fallon, 138 South Main Street, O'Fallon, Missouri 63366.	May 24, 2000	290316
New Mexico: Bernadillo.	Unincorporated Areas.	May 11, 2000, May 18, 2000, *Albuquerque Journal*.	The Honorable Tom Rutherford, Chairperson, Bernalillo County Board of Commissioners, 2400 Broadway Southeast, Albuquerque, New Mexico 87102.	Mar. 31, 2000	350001
Oklahoma:					
Oklahoma	City of Oklahoma City.	May 31, 2000, June 7, 2000, *Daily Oklahoman*.	The Honorable Kirk Humphreys, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.	May 12, 2000	405378
Tulsa	City of Glenpool	May 31, 2000, June 7, 2000, *Tulsa World*.	The Honorable Charles Campbell, Mayor, City of Glenpool, P.O. Box 70, Glenpool, Oklahoma 74033.	Sept. 5, 2000	400208
Texas:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Brazos	City of Bryan	June 14, 2000, June 21, 2000, *Bryan-College Station Eagle*.	The Honorable Lonnie Stabler, Mayor, City of Bryan, P.O. Box 1000, Bryan, Texas 77805.	Sept. 19, 2000	480082
Brazos	City of College Station.	June 14, 2000, June 21, 2000, *Bryan-College Station Eagle*.	The Honorable Lynn McIlhaney, Mayor, City of College Station, P.O. Box 9960, College Station, Texas 77842–0960.	Sept. 19, 2000	480083
Denton	City of Denton	June 22, 2000, June 29, 2000, *Denton Record Chronicle*.	The Honorable Eulene Brock, Mayor, City of Denton, 215 East McKinney Street, Denton, Texas 76201.	June 1, 2000	480194
Denton	City of Lewisville	May 26, 2000, June 2, 2000, *Lewisville News*.	The Honorable Bobbie J. Mitchell, Mayor, City of Lewisville, P.O. Box 299002, Lewisville, Texas 75029–9002.	May 5, 2000	480195
Denton	Unincorporated Areas.	June 22, 2000, June 29, 2000, *Denton Record Chronicle*.	The Honorable Kirk Wilson, Denton County Judge, 110 West Hickory Street, Denton, Texas 76201.	June 1, 2000	480774
Denton	Town of Westlake	June 6, 2000, June 13, 2000, *Keller Citizen*.	The Honorable Scott Bradley, Mayor, Town of Westlake, 3 Village Circle, Suite 207, Westlake, Texas 76262.	May 15, 2000	480614
Fort Bend	Fort Bend County, Municipal Utility, District No. 34.	May 12, 2000, May 19, 2000, *Herald-Coaster*.	Mr. Saib Y. Saour, P.E., R.L.S., District Engineer, 34 Fort Bend County Municipal Utility District No. 34, c/o Benchmark Engineering Corporation, 2401 Fountainview Drive, Suite 220, Houston, Texas 77057.	Mar. 31, 2000	481520
Fort Bend	Fort Bend County, Municipal Utility, District No. 35.	May 12, 2000, May 19, 2000, *Herald-Coaster*.	Mr. Saib Y. Saour, P.E., R.L.S., District Engineer, Fort Bend County Municipal Utility District No. 35, c/o Benchmark Engineering Corporation, 2401 Fountainview Drive, Suite 220, Houston, Texas 77057.	Mar. 31, 2000	481519
Fort Bend	Unincorporated Areas.	May 12, 2000, May 19, 2000, *The Herald-Coaster*.	The Honorable James Adolphus, Fort Bend County Judge, 301 Jackson Street, Suite 719, Richmond, Texas 77469.	Mar. 31, 2000	480228
Harris	City of Houston	June 6, 2000, June 13, 2000, *Houston Chronicle*.	The Honorable Lee Brown, Mayor, City of Houston, P.O. Box 1562, Houston, Texas 77251–1562.	Sept. 11, 2000	480296
Washington: Skagit.	Unincorporated Areas.	May 11, 2000, May 18, 2000, *Skagit Valley Herald*.	The Honorable Harvey Wolden, Chairperson, Skagit County Board of Commissioners, 700 South Second Street, Room 202, Mount Vernon, Washington 98273.	April 7, 2000	530151

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: October 16, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–27640 Filed 10–26–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
CONNECTICUT	
Middletown (City), Middlesex County (FEMA Docket Nos. 7275 and 7307)	
Mattabasset River:	
Approximately 60 feet downstream of State Route 72	*23
At upstream county boundary (approximately 2,590 feet upstream of Industrial Park Road)	*23
Miner Brook:	
At confluence with Mattabasset River	*23
Approximately 50 feet downstream of abandoned railroad	*23
Sawmill Brook:	
At confluence with Mattabasset River	*23
Approximately 1,530 feet downstream of Aetna Entrance Road	*24
Longhill Brook:	
Approximately 130 feet downstream of South Main Street	*52
Just upstream of Wesleyan Road	*187
Longhill Brook Diversion Channel:	
At the downstream confluence with Longhill Brook	*82
At the upstream confluence with Longhill Brook	*98
Roundhill Brook:	
At the confluence with Longhill Brook	*88
Maps available for inspection at the Municipal Building, Planning and Zoning Room, 245 DeKoven Drive, Middletown, Connecticut.	
South Windsor (Town), Hartford County (FEMA Docket No. 7307)	
Avery Brook:	
Approximately 1,475 feet downstream of Benedict Drive	*176
Approximately 340 feet downstream of Beelzebub	*226
Maps available for inspection at the South Windsor Town Hall, 1540 Sullivan Avenue, South Windsor, Connecticut.	
DELAWARE	
New Castle County (Unincorporated Areas (FEMA Docket No. 7303)	
Unnamed Tributary to Mill Creek:	
Just upstream of Loblolly Court	*267
Approximately 870 feet upstream of Loblolly Court	*281
Maps available for inspection at the New Castle Government Center, 87 Reads Way, New Castle, Delaware.	
GEORGIA	
Americus (City), Sumner County (FEMA Docket No. 7307)	
Town Creek:	
Approximately 500 feet downstream of Magnolia Street	*330
Approximately 225 feet upstream of Rigas Road	*373
Mill Creek Tributary:	
Approximately 800 feet downstream of CSX Transportation	*339
Approximately 100 feet upstream of State Route 27	*385
Maps available for inspection at the Americus City Hall, Community Development Department, 101 West Lamar Street, Americus, Georgia.	
Sumter County (Unincorporated Areas) (FEMA Docket No. 7307)	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Muckalee Creek:	
At the confluence of Mill Creek	*321
Approximately 1,800 feet upstream of confluence of Wolf Creek	*333
Mill Creek Tributary:	
Approximately 700 feet downstream of CSX Transportation	*339
Approximately 1,500 feet downstream of U.S. Route 280	*375
Maps available for inspection at the Code Enforcement Office, Sumter County Courthouse, West Lamar Street, Americus, Georgia.	
ILLINOIS	
Beach Park (Village), Lake County (FEMA Docket No. 7307)	
Bull Creek (near Waukegan):	
Just upstream of Talmadge Avenue	*625
Approximately 725 feet upstream of the upstream crossing of Beach Road	*667
Maps available for inspection at the Beach Park Village Hall, 11270 West Wadsworth Road, Beach Park, Illinois.	
Bloomington (City), McLean County (FEMA Docket No. 7783)	
Goose Creek:	
At confluence with Sugar Creek	*740
Approximately 970 feet downstream of U.S. Route 51	*797
High School Branch:	
At confluence with Sugar Creek	*770
Approximately 1,960 feet upstream of Towanda Avenue	*810
Little Kickapoo Creek:	
At upstream side of Ireland Grove Road	*818
Approximately 2,700 feet upstream of Lincoln Street	*823
Brookridge Branch:	
Approximately 450 feet upstream of confluence with Little Kickapoo Creek	*819
Approximately 1,900 feet upstream of Hershey Road	*827
Skunk Creek:	
Approximately 650 feet upstream of confluence with Sugar Creek	*744
Approximately 1,120 feet upstream of Market Street	*746
East Tributary Skunk Creek:	
Approximately 550 feet upstream of White Oak Road	*763
Approximately 1,050 feet upstream of White Oak Road	*763
Sugar Creek:	
At downstream side of Interstate Routes 55 and 74	*738
At downstream side of Airport Road	*810
Maps available for inspection at the City of Bloomington Engineering and Water Department, 109 East Olive Street, Bloomington, Illinois.	
McLean County (Unincorporated Areas) (FEMA Docket No. 7287)	
Sugar Creek:	
Approximately 230 feet downstream of Stringtown Road	*697
At downstream side of Airport Road	*810
East Tributary Skunk Creek:	
At confluence with Skunk Creek	*756
At Norfolk and Western Railway	*757
Skunk Creek:	
At confluence with Sugar Creek	*744
Approximately 625 feet downstream of Interstate Routes 55 and 74	*780
North Branch Sugar Creek Tributary:	
Approximately 625 feet upstream of confluence with North Branch Sugar Creek	*781
At downstream side of Koerner Street	*812
North Branch Sugar Creek:	
Approximately 125 feet upstream of Fort Jesse Road	*790
Approximately 225 feet upstream of Raab Road	*814
Brookridge Branch:	
At confluence with Little Kickapoo Creek	*819
Approximately 2,020 feet upstream of Hershey Road	*827
Little Kickapoo Creek:	
Approximately 250 feet downstream of County Road 800	*739
Just downstream of Lincoln Street	*820
Butcher's Lane Tributary:	
Approximately 240 feet downstream of Butchers Lane	*761
At upstream side of Butchers Lane	*765
Goose Creek:	
Approximately 325 feet upstream of West Oakland County Road	*740
Just upstream of Morris Avenue	*771
Short Point Creek Tributary A:	
1,120 feet upstream from U.S. Route 51	*739
1,960 feet upstream from U.S. Route 51	*744
West Branch Sugar Creek:	
Upstream of Raab Road	*817
Maps available for inspection at the McLean County Building and Zoning Department, 104 West Front Street, Bloomington, Illinois.	
Normal (Town), McLean County (FEMA Docket No. 7283)	
North Branch Sugar Creek:	
At confluence with Sugar Creek	*762
Approximately 100 feet upstream of Fort Jesse Road	*790
Skunk Creek:	
Approximately 200 feet upstream of College Avenue	*780
At downstream side of Gregory Street	*786
East Tributary Skunk Creek:	
At Norfolk and Western Railroad	*757
Approximately 20 feet upstream of Hovey Avenue	*763
Sugar Creek:	
Approximately 225 feet upstream of confluence of West Branch Sugar Creek	*754
Approximately 50 feet downstream of Veterans Parkway	*790
West Branch Sugar Creek:	
Approximately 120 feet upstream of confluence with Sugar Creek	*754
At upstream side of Gulf Course weir	*811
West Branch Sugar Creek Tributary:	
At confluence with West Branch	*800
Approximately 840 feet upstream of confluence with West Branch	*805
Linden Street Drain:	
At upstream side of Sycamore Street	*792
Approximately 625 feet upstream of Shelbourne Drive	*810

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Normal Town Hall, 100 East Phoenix Avenue, Normal, Illinois.	
Waukegan (City), Lake County (FEMA Docket Nos. 7307 and 7263)	
Bull Creek (near Waukegan):	
Approximately 175 feet upstream of North Shore Avenue	*651
Just upstream of the upstream crossing of Beach Road	*665
Des Plaines River:	
Approximately 2.1 miles downstream of Belvidere Road	*661
Approximately 1.2 miles downstream of Belvidere Road	*662
Suburban Country Club Tributary:	
Approximately 1,750 feet upstream of Unnamed Road	*668
Approximately 200 feet upstream of Delaney Road	*668
Maps available for inspection at the Waukegan City Engineer's Office, 106 North Utica Street, Waukegan, Illinois.	
MAINE	
Andrews Island, Knox County (FEMA Docket No. 7307)	
Atlantic Ocean:	
Approximately 2,000 feet northeast of Nash Point	*20
At the island of The Neck, west side of Andrews Island	*10
Maps available for inspection at the Andrews Island Key Bank Building, 286 Water Street, 5th Floor, Augusta, Maine.	
MICHIGAN	
Meridian (Charter Township), Ingham County (FEMA Docket No. 7243)	
Herron Creek:	
At upstream side of CSX Transportation	*847
At Jolly Road	*854
Smith Drain:	
At confluence with Red Cedar River	*847
At Jolly Road	*874
Maps available for inspection at the Charter Township of Meridian Municipal Building, 5151 Marsh Road, Okemos, Michigan.	
NEW YORK	
Frankfort (Village), Herkimer County (FEMA Docket No. D7500)	
Mohawk River:	
Approximately 0.38 mile downstream of Railroad Street	*395
Approximately 0.31 mile downstream of upstream corporate limits	*397
Maps available for inspection at the Frankfort Village Hall, Clerk's Office, 126 East Orchard Street, Frankfort, New York.	
Italy (Town), Yates County (FEMA Docket No. D7500)	
Lake Canandaigua:	
Entire shoreline within community	*692
Maps available for inspection at the Italy Town Clerk's Office, 6085 Italy Valley Road, Naples, New York.	
Lancaster (Town), Erie County (FEMA Docket No. 7307)	
Little Buffalo Creek:	
At confluence with Cayuga Creek	*679
At a point approximately 1,200 feet upstream of Schwartz Road	*711
Scajaquada Creek:	
At Service Place	*697
At a point approximately 600 feet upstream of Stoneledge Drive	*711
Plum Bottom Creek:	
Upstream side of Steinfeldt Road	*686
At a point approximately 720 feet upstream of Cemetery Road	*702
Ellicott Creek:	
Approximately 1,700 feet upstream of Transit Road	*702
Approximately 100 feet upstream of Pavement Road	*729
Maps available for inspection at the Town of Lancaster Building Inspector's Office, 11 West Main Street, Lancaster, New York. New York	
Monroe (Town), Orange County (FEMA Docket No. 7307)	
Palm Brook:	
Approximately 72 feet upstream of State Route 17	*657
Approximately 0.3 mile upstream of Raywood Drive	*760
Maps available for inspection at the Town of Monroe Building Department, 11 Stage Road, Monroe, New York.	
Oneida (City), Madison County (FEMA Docket No. 7307)	
Higinbotham Brook:	
At abandoned railroad	*428
Approximately 460 feet upstream of State Route 5	*479
Maps available for inspection at the City of Oneida Municipal Building, 109 Main Street, Oneida, New York.	
OHIO	
Lucas County (Unincorporated Areas) (FEMA Docket Nos. 7227, 7295, and 7311)	
Ottawa River:	
At the State boundary	*580
Approximately 0.5 mile upstream of Summit Street	*580
Maumee Bay:	
Approximately 1,500 feet east of the intersection of 103rd Street and Summit Street	*580
Maumee Bay:	
Approximately 1,000 feet northeast of the intersection of Breakwater Drive and Haigh Street	*579
Lake Erie:	
At the intersection of Decant Road and Arquette Road	*579
Sautter Ditch:	
At Cedar Point Road.	
Approximately 60 feet downstream of the confluence of Wolf Ditch	*579
Berger Ditch:	
At mouth at Maumee Bay.	
Just downstream of Cedar Point Road	*579
Cedar Creek:	
At the confluence with Reno Side Cut and Wards Canal	*579
Just downstream of Lyon Road	*579
Drennan Ditch:	
An area approximately 1,350 feet west of the intersection of Columbus Street and Kipling Drive	*634
Zaleski Ditch:	
At the confluence with Cairl Ditch	*641
At Whitehouse-Spencer Road	*667

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Haefner Ditch:	
Approximately 650 feet downstream of I–475	*638
At the confluence of Vanderpool Ditch	*641
Vanderpool Ditch:	
At the confluence with Haefner Ditch	*641
At North King Road	*658
Wolf Creek:	
Approximately 100 feet upstream of Holland-Sylvania Road	*607
At confluence of Everett Ditch	*636
Approximately 50 feet upstream of South Eber Road	*659
Hill Ditch:	
Approximately 450 feet downstream of I–475	*652
At Central Avenue	*641
Stone Ditch:	
Upstream side of Salisbury Road	*641
Approximately 75 feet upstream of Weckerly Road	*648
Potter Ditch:	
Upstream side of Derbyshire Road	*636
Approximately 0.4 mile upstream of McCord Road	*649
Comstock Ditch:	
At confluence with Smith Ditch North	*669
Approximately 140 feet upstream of Brint Road	*674
Smith Ditch North:	
Approximately 1,150 feet upstream of confluence with Tenmile Creek	*660
At confluence of Comstock Ditch	*669
Sharp Ditch:	
At confluence of Comstock Ditch	*669
At Brint Road	*677
Heldman Ditch (East):	
Upstream side of Hill Avenue	*635
Approximately 1,650 feet downstream of Crissey Road	*669
Schrieber Ditch:	
Upstream side of Centennial Road	*678
Approximately 0.6 mile upstream of Winterhaven Drive	*685
Smith Ditch (South):	
At the confluence with Hill Ditch	*641
At King Road	*662
Blystone Ditch:	
Approximately 1,400 feet upstream of Black Road	*633
Downstream side of State Route 64	*648
Swan Creek:	
Approximately 1,400 feet downstream of Whitehouse-Spencer Road	*646
Upstream side of Berkey-Southern Road	*648
Cairl Ditch:	
At confluence with Wolf Creek	*609
Approximately 50 feet downstream of Perrysburg-Holland Road	*609
Approximately 200 feet downstream of Ohio Turnpike	*639
Confluence of Zaleski Ditch	*641
Whidden Ditch:	
At I–475	*595
Approximately 0.4 mile upstream of Norfolk and Western Railway	*644
Maumee River:	
Downstream side of Interstate 475	*595
Approximately 1.1 miles upstream of Norfolk and Western Railway	*650
Maumee:	
Entire shoreline within the county	*579
Drennan Ditch:	
Approximately 1,260 feet downstream of Private Drive	*634
At Private Drive	*634
Maps available for inspection at the Lucas County Engineering Office, One Government Center, Suite 801, Toledo, Ohio.	
Newark (City), Licking County (FEMA Docket No. 7303)	
North Fork Licking River:	
Approximately 360 feet upstream of confluence with Licking River	*813
Approximately 4,752 feet upstream of Manning Street	*830
Maps available for inspection at the Newark City Hall, Engineering Department, 40 West Main Street, Newark, Ohio.	
PENNSYLVANIA	
Ayr (Township), Fulton County (FEMA Docket No. 7307)	
Big Cove Creek:	
Approximately 0.6 mile downstream of the corporate limits	*848
At the corporate limits	*865
Maps available for inspection at the Ayr Township Building, 979 Buchanan Trail, McConnellsburg, Pennsylvania.	
McConnellsburg (Borough), Fulton County (FEMA Docket No. 7307)	
Big Cove Creek:	
At the corporate limits (south)	*855
At the corporate limits (north)	*871
Maps available for inspection at the Fulton County Courthouse, North 2nd Street, McConnellsburg, Pennsylvania.	
Todd (Township), Fulton County (FEMA Docket No. 7307)	
Big Cove Creek:	
Approximately 50 feet downstream of State Route 16	*865
Approximately 0.6 mile upstream of State Route 16	*887
Maps available for inspection at the Todd Township Building, 2998 East Dutch Corner Road, McConnellsburg, Pennsylvania.	
WISCONSIN	
West Baraboo (Village), Sauk County (FEMA Docket No. 7271)	
Baraboo River:	
Approximately 1,350 feet downstream of Shaw Street	*843
Approximately 0.4 mile upstream of U.S. Route 12	*854
Maps available for inspection at the West Baraboo Village Hall, 500 Cedar Street, Baraboo, Wisconsin.	
Ironton (Village), Sauk County (FEMA Docket No. 7271)	
Little Baraboo River:	
At downstream corporate limits	*903
At upstream corporate limits	*904
Maps available for inspection at the Ironton Community Center, 290 Main Street, LaValley, Wisconsin.	
Lake Delton (Village), Sauk County (FEMA Docket No. 7271)	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Wisconsin River:	
At downstream corporate limits	*824
At upstream corporate limits	*825
Maps available for inspection at the Lake Delton Village Office, 50 Wisconsin Dells Parkway South, Lake Delton, Wisconsin.	
LaValle (Village), Sauk County (FEMA Docket No. 7271)	
Baraboo River:	
Approximately 2,700 feet upstream of State Route 33	*892
Approximately 2,075 feet upstream of State Route 58	*894
Maps available for inspection at the LaValle Village Office, 103 West Main Street, LaValle, Wisconsin.	
Merrimac (Village), Sauk County (FEMA Docket No. 7271)	
Wisconsin River:	
At downstream corporate limits	*775
At upstream corporate limits	*776
Maps available for inspection at the Merrimac Village Hall, 100 Cook Street, Merrimac, Wisconsin.	
North Freedom (Village), Sauk County (FEMA Docket No. 7271)	
Baraboo River:	
Approximately 0.53 mile upstream of the downstream crossing of the North Western railroad	*864
Approximately 1.08 miles upstream of Mid-Continent Railway	*867
Maps available for inspection at the North Freedom Village Office, 103 North Maple, North Freedom, Wisconsin.	
Plain (Village), Sauk County (FEMA Docket No. 7271)	
Honey Creek:	
Approximately 1,000 feet northeast of the intersection of Main Street and Bridge Road	*799
Maps available for inspection at the Plain Village Clerk's Office, 1015 Cedar Street, Plain, Wisconsin.	
Prairie du Sac (Village), Sauk County (FEMA Docket No. 7271)	
Wisconsin River:	
At downstream corporate limits	*748
At upstream corporate limits	*749
Maps available for inspection at the Prairie du Sac Village Hall, 280 Washington Street, Prairie du Sac, Wisconsin.	
Reedsburg (City), Sauk County (FEMA Docket No. 7271)	
Baraboo River:	
Approximately 400 feet upstream of Golf Course Road	*876
Approximately 1 mile upstream of State Route 23/33	*880
Maps available for inspection at the Reedsburg City Hall, 134 South Locust Street, Reedsburg, Wisconsin.	
Rock Springs (Village), Sauk County (FEMA Docket No. 7271)	
Baraboo River:	
Approximately 1,480 feet downstream of State Highway 136 (East Broadway)	*870
At downstream side of Chicago and Northwestern (approximately 3,400 feet upstream of confluence with Narrows Creek)	*871
Narrows Creek:	
At the confluence with the Baraboo River	*870
Approximately 1,400 feet downstream of State Route 154	*870
Maps available for inspection at the Rock Springs Village Hall, 110 East Broadway, Rock Springs, Wisconsin.	
Sauk City (Village), Sauk County (FEMA Docket No. 7271)	
Wisconsin River:	
At downstream corporate limits	*743
At upstream corporate limits	*748
Maps available for inspection at the Sauk City Village Hall, 726 Water Street, Sauk City, Wisconsin.	
Sauk County (Unincorporated Areas) (FEMA Docket No. 7271)	
Seeley Creek:	
At confluence with Baraboo River	*864
Approximately 0.5 mile upstream of County Highway W	*864
Little Baraboo River:	
At confluence with Baraboo River	*892
Approximately 160 feet downstream of State Route 58	*894
Narrows Creek Split Flow:	
At the confluence with Narrows Creek	*914
Approximately 6,400 feet upstream of the confluence with Narrows Creek	*925
Wisconsin River:	
Approximately 1,000 feet downstream of State Route 130	*701
Just downstream of Kilbourn Dam	*827
Narrows Creek:	
Approximately 0.60 mile upstream of the confluence with the Baraboo River	*870
Just downstream of State Route 154	*924
Baraboo River:	
At county boundary (Sauk/Columbia county line) approximately 2.55 miles downstream of State Route 33	*806
Approximately 0.56 mile upstream of County Road G	*910
Maps available for inspection at the Sauk County Courthouse, 510 Broadway, Baraboo, Wisconsin.	
Spring Green (Village), Sauk County (FEMA Docket No. 7271)	
Wisconsin River:	
Approximately 1.3 miles downstream of State Highway 23 bridge	*710
Approximately 500 feet upstream of State Highway 23 bridge	*712
Maps available for inspection at the Spring Green Village Hall, 112 West Monroe Street, Spring Green, Wisconsin.	
West Baraboo (Village), Sauk County (FEMA Docket No. 7271)	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Baraboo River:	
Approximately 1,350 feet downstream of Shaw Street	*843
Approximately 0.4 mile upstream of U.S. Route 12	*854
Maps available for inspection at the West Baraboo Village Hall, 500 Cedar Street, Baraboo, Wisconsin.	
Wisconsin Dells (City), Sauk and Columbia Counties (FEMA Docket Nos. 7271 and 7283)	
Hulbert Creek:	
Approximately 30 feet upstream of U.S. Highway 12	*826
Approximately 2,340 feet upstream of Trout Road	*829
Wisconsin River:	
At downstream corporate limit	*824
At downstream side of Kilbourn Dam	*827
Maps available for inspection at the Wisconsin Dells City Hall, 300 La Crosse Street, Wisconsin Dells, Wisconsin.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 16, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–27643 Filed 10–26–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
ARKANSAS	
Benton County and Incorporated Areas (FEMA Docket No. 7322)	
Osage/Turtle Creek:	
Just upstream of North 12th Street	*1,325
Approximately 400 feet upstream of North 6th Street	*1,340
Blossom Way Creek:	
At its confluence with Osage/Turtle Creek	*1,205
At its intersection with South 26th Street	*1,276
Osage Tributary 1:	
At its intersection with (Horsebarn Tributary) Stoney Brook	*1,204
Approximately 700 feet upstream of Horsebarn Road	*1,252

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
Superior Tributary:	
At its confluence with Osage/Turtle Creek to Osage/Turtle Creek	*1,284
Approximately 1,300 feet upstream of Dixieland Road	*1,314
Tributary 1 to Blossom Way Creek:	
At its confluence with Blossom Way Creek	*1,288
Approximately 3,300 feet upstream of its confluence with Tributary 2 of Blossom Way Creek	*1,325
Tributary 2 of Blossom Way Creek:	
At its confluence with Tributary 1 of Blossom Way Creek	*1,299
Approximately 4,300 feet upstream of Honeysuckle Road	*1,332
Tributary 3 of Blossom Way Creek:	
At its confluence with Blossom Way Creek	*1,257
Approximately 1,900 feet upstream from its confluence with Blossom Way Creek	*1,268
Maps for Benton County are available for inspection at 215 East Central, Suite 8, Room 302, Bentonville, Arkansas.	
Maps for the City of Rogers are available for inspection at 207 South Second, Rogers, Arkansas.	
Maps for the City of Lowell are available for inspection at 214 North Lincoln Street, Lowell, Arkansas.	
Maps for the City of Bentonville are available for inspection at 315 Southwest A Street, Bentonville, Arkansas.	
Crawford County and Incorporated Areas (FEMA Docket No. 7322)	
Tributary 1:	
At its confluence with Little Frog Bayou	*413
Approximately 350 feet upstream of East Cherry Street	*431
Tributary 2:	
At its confluence with Tributary 1	*418
Approximately 275 feet upstream of East Cherry Street	*429
Tributary 4:	
At its confluence with Little Frog Bayou Tributary	*444
Approximately 1,200 feet upstream of its confluence with Little Frog Bayou Tributary	*469
Tributary A:	
Approximately 650 feet downstream of the Union Pacific Railroad	*411
Just upstream of Arkansas Highway 64	*434
Lighthouse Drain:	
At its confluence with Tributary A	*414
Approximately 100 feet upstream of Lighthouse Drive	*439
Little Frog Bayou Tributary:	
At its confluence with Little Frog Bayou	*426
Just upstream of Maple Shade Road	*508
Maps for Crawford County are available for inspection at 300 Main Street, Room 4, Van Buren, Arkansas.	
Maps for the City of Alma are available for inspection at 804 Fayetteville Avenue, Suite B, Alma, Arkansas 72921.	
City of Russellville, Pope County (FEMA Docket No. 7322)	
Whig Creek:	
At its intersection with the Union Pacific Railroad	*393
Just upstream of Arkansas Highway 64	*416
Whig Creek Tributary No. 1:	
At its confluence with Whig Creek	*323
Approximately 500 feet upstream of Arkansas Highway 75	*326
Whig Creek Tributary No. 2:	
At its confluence with Whig Creek	*323
Approximately 2,500 feet upstream of the Dardanelle and Russellville Railroad	*323
Prairie Creek:	
At its confluence with Prairie Creek Tributary No. 2	*374
Approximately 250 feet upstream of Weir Road	*393
Prairie Creek Tributary No. 2:	
At its confluence with Prairie Creek	*374
At its intersection with Weir Road (Arkansas Highway 326)	*382
Approximately 2,000 feet upstream of Weir Road	*394
School Drain:	
At its confluence with Prairie Creek	*343
Approximately 2,000 feet upstream of University Drive	*387
Maps are available for inspection at 205 West Second Street, Russellville, Arkansas.	
Washington County and Incorporated Areas (FEMA Docket No. 7322)	
Middle Fork White River:	
Approximately 3,700 feet upstream of its confluence with Koger Branch	
Stokenbury Creek:	
At its confluence with the White River	*1,199
Just upstream of Stokenbury Road	*1,446
Koger Branch:	
At its confluence with the Middle Fork White River	*1,202
Approximately 2,700 feet upstream of South Harris Drive	*1,220
Faubus Creek:	
At its confluence with the White River	*1,211
Approximately 4,300 feet upstream of South Center Street	*1,255
Maps for the City of Elkins are available for inspection at 130 West First Street, Elkins, Arkansas.	
Maps for Washington County are available for inspection at 4 South College Avenue, Suite 205, Fayetteville, Arkansas.	
NORTH DAKOTA	
Benson County and Incorporated Areas (FEMA Docket No. 7322)	
Silver Lake:	
Entire shoreline of Silver Lake	*1,450
Pelican Lake:	
South shoreline of Pelican Lake	*1,450
Spring Lake:	
Spring Lake shoreline	*1,450
Devils Lake:	
Northwest shoreline of Grahms Island	*1,450
Devils Lake shoreline adjacent to Minnewaukan	*1,451
Area east of U.S. Route 281, south of intersection with State Route 19	*1,453
West side Woods Rutten Causeway	*1,454
West side of State Route 57 Causeway south of the Narrows State Recreation Area	*1,455
Maps are available for inspection at the Benson County Courthouse, Tax Equalization Office, 311 B Avenue South, Minnewaukan, North Dakota.	
Maps for the City of Minnewaukan are available for inspection at the City Office, 230 Main Street East, Minnewaukan, North Dakota 58351.	
Maps for Spirit Lake Tribe are available for inspection at the Floodplain Emergency Management-Bureau of Indian Affairs Realty Office, Highway 57, Fort Totten, North Dakota.	
Ramsey County and Incorporated Areas (FEMA Docket No. 7322)	
Lake Irvine:	
Entire shoreline Lake Irvine	*1,450
Lake Alice:	
Entire shoreline Lake Alice	*1,450
Chain Lake:	
Entire shoreline Chain Lake	*1,450

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
Mikes Lake:	
Entire shoreline Mikes Lake	*1,450
Dry Lake:	
Entire shoreline of Dry Lake	*1,450
Stone Lake:	
Entire shoreline of Stone Lake	*1,450
Pelican Lake:	
North shoreline of Pelican Lake	*1,450
Sixmile Bay:	
Northernmost point of Sixmile Bay	*1,450
West shore of Sixmile Bay	*1,450
East shore of Sixmile Bay two miles south of State Route 19	*1,451
Creel Bay:	
Entire western shore of Creel Bay	*1,450
Bay side of levee, east shoreline of Creel Bay, one mile north of Lakewood Park	*1,452
Bay side of levee located at southwest side of Devils Lake Municipal Airport	*1,455
Devils Lake:	
Approximately 7,000 feet west of 8th Avenue South	*1,451
Approximately 7,000 feet east of 8th Avenue South	*1,452
West Side State Route 57 Causeway south of the Narrows State Recreational Area	*1,455
East Devils Lake:	
North shoreline of East Devils Lake	*1,450
Maps for Benson County, Township of Coulee and Township of Creel are available for inspection at Ramsey County Emergency Management Office, 524 4th Avenue, Devils Lake, North Dakota.	
Maps are available for inspection at the Post Office c/o Bill Bartle, 304 Orvis Avenue, Church's Ferry, North Dakota.	
Maps are available for inspection at the City Offices, 423 6th Street, Devils Lake, North Dakota.	
WASHINGTON	
Okanogan County (Unincorporated Areas) (FEMA Docket No. 7322)	
Twisp River:	
Approximately 2.18 miles above mouth	*1,677
Approximately 2.23 miles above mouth	*1,679
At its intersection with the Poorman Creek Cutoff Road Bridge	*1,830
Maps are available for inspection at Okanogan County Planning and Development Office, 237 Fourth Avenue, Okanogan, Washington.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 20, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–27644 Filed 10–26–00; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 15

[USCG 1999–6224]

RIN 2115–AF23

Licensing and Manning for Officers of Towing Vessels

AGENCY: Coast Guard, DOT.

ACTION: Interim rule; delay of effective date.

SUMMARY: The Coast Guard is delaying the effective date of an interim rule with request for comments, published in the **Federal Register** on November 19, 1999 [64 FR 63213]. An extension of the effective date from November 20, 2000, to May 21, 2001, is necessary so we can make clarifications and issue guidelines for implementation of the new licenses and revised training criteria established in that interim rule, and carry on outreach.

EFFECTIVE DATE: This interim rule delays the effective date of the interim rule of November 19, 1999, from November 20, 2000, to May 21, 2001; it leaves unchanged all other requirements.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Luke Harden, Office of Operating and Environmental Standards (G–MSO), U.S. Coast Guard, 202–267–0229. The Department of Transportation maintains the docket for this rulemaking on the web site for its Document Management System at http://dms.dot.gov. The docket number is USCG 1999–6224.

SUPPLEMENTARY INFORMATION: On November 19, 1999, the Coast Guard published an interim rule and request for comments entitled ''Licensing and Manning for Officers of Towing Vessels'' in the **Federal Register** [64 FR 63213]. The interim rule that was to become effective on November 20, 2000, established new licenses and revised training for officers of towing vessels.

Since promulgation of the interim rule, the Coast Guard has become aware that certain provisions in the rule may require clarification. The Coast Guard plans to publish clarification in a separate interim rule. To ensure that it makes clear all options, and that it gives all affected parties enough time to comply with the new and revised requirements, the Coast Guard is postponing the effective date of the interim rule of November 19, 1999, for six months. The Coast Guard considers a postponement of six months to be adequate for better implementation of the new requirements, the revised standards for training set forth in that interim rule, and outreach.

Accordingly, the effective date for the interim rule of November 19, 1999 [64 FR 63213] is changed from November 20, 2000, to May 21, 2001.

Dated: October 23, 2000.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–27665 Filed 10–26–00; 8:45 am]

BILLING CODE 4910–15–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[PP Docket No. 00–67; FCC 00–342]

Compatibility Between Cable Systems and Consumer Electronics Equipment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On September 14, 2000, the Federal Communications Commission adopted a Report and Order (R&O) on the labeling of digital television (DTV) receivers and other consumer electronics receiving devices. The labeling requirements are designed to ensure that consumers understand the capability of digital television equipment to operate with cable television systems. This will not only aid consumers in making informed purchasing decisions with respect to DTV equipment but also promote the overall transition from analog to digital television.

DATES: The rules in this document contain information collection requirements and are not effective until approved by the Office of Management and Budget. FCC will publish a document in the **Federal Register** announcing the effective date of these rules.

Public and agency comments on the information collection are due December 26, 2000.

ADDRESSES: In addition to filing comments with the Office of Secretary, a copy of any comments on the information collection contained herein shall be submitted to Judy Boley, Federal Communications Commission,

Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Jonathan Levy (202–418–2030), Office of Plans and Policy, Federal Communications Commission. For additional information concerning the information collection(s) contained in this document, contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* PP Docket No. 00–67, FCC 00–342, adopted September 14, 2000; released September 15, 2000. The full text of the Commission's *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036. The *Report and Order* contains a new information collection subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection contained in this proceeding.

Summary of the Report and Order

1. The *R&O* adopts labeling requirements for three categories of digital television receivers and other consumer electronics TV receiving devices. The labeling requirements are designed to ensure that consumers understand the capability of digital television equipment to operate with cable television systems providing digital services. Following are the three consumer electronics TV receiving device labels that the Commission adopted. Commission rules require that any digital consumer electronics TV receiving device that does not provide one or more of the feature sets described in the labels may not be marketed as ''cable ready'' or ''cable compatible'' and that digital consumer electronics TV receiving devices that do provide one or more of these feature sets must be labeled as such. Because the new labeling requirements fall on consumer electronics equipment, the new rules are found in part 15 of 47 CFR (''Radio Frequency Devices'') rather than part 76 (''Multichannel Video and Cable Television Service'').

(a) ''Digital Cable Ready 1'' is a consumer electronics TV receiving device capable of receiving analog basic, digital basic and digital premium cable television programming by direct connection to a cable system providing digital programming. This device does not have a 1394 connector or other digital interface. A security card (or POD) provided by the cable operator is required to view encrypted programming.

(b) ''Digital Cable Ready 2'' is a consumer electronics TV receiving device capable of receiving analog basic, digital basic and digital premium cable television programming by direct connection to a cable system providing digital programming. This receiving device will incorporate all features defined in Digital Cable Ready 1 and will also include the 1394 digital interface connector. A security card/POD provided by the cable operator is required to view encrypted programming.

Note: The 1394 connector may be used for attaching the receiving device to various other consumer appliances, including a digital cable set-top box that incorporates the 1394 connector. Connection of a Digital Cable Ready 2 receiver to a digital set-top box may support advanced and interactive digital services and programming delivered by the cable system via the set-top box.

(c) ''Digital Cable Ready 3'' is a consumer electronics TV receiving device capable of receiving analog basic, digital basic and digital premium cable television programming. This device will incorporate all features defined in Digital Cable Ready 1 and will also receive advanced and interactive digital services by direct connection to a cable system providing digital programming and advanced and interactive digital services. A security card/POD provided by the cable operator is required to view encrypted programming.

2. The *R&O* also keeps PP Docket No. 00–67 open in order to give the Commission the option of incorporating into its rules specifications, on which the industries are still working, for the Digital Cable Ready 3 receiver. Additionally, the *R&O* requires the cable and consumer electronics industries to report at intervals to the Commission on progress in implementing earlier agreements on technical standards for direct connection of digital television receivers to digital cable systems and on providing tuning and program scheduling information (Program and Scheduling Information Protocol or ''PSIP'' information) to support the navigation function of DTV receivers. The first report is due November 30, 2000 and subsequent reports are due April 30 and October 31, 2001 and April 30 and October 31, 2002.

3. The *Notice of Proposed Rulemaking,* 65 FR 24671, April 27, 2000, in this proceeding also sought comment about scrambling of digital broadcast signals and their placement on cable service tiers and about whether the digital transition necessitates any amendment to Commission requirements that cable operators offer supplemental equipment to subscribers to enable them to utilize certain special features of their digital television receivers (*e.g.,* ''picture in picture''). The R&O concludes the pending digital must carry proceeding is the appropriate venue for resolving digital broadcast signal carriage issues and that no action is required at this time with respect to our supplemental equipment rules.

4. Additionally, the *Notice of Proposed Rulemaking* in this proceeding addressed licensing terms for copy protection technology. Because the question that emerged in the filed comments relates to the Commission's navigation devices rules, the Commission addressed this issue in a separate decision in the navigation devices docket. *See* Further Notice of Proposed Rulemaking, Memorandum Opinion & Order, and Declaratory Ruling in CS Docket No. 97–80, Implementation of Section 304 of the Telecommunications Act of 1996-Commercial Availability of Navigation Devices, FCC 00–341, adopted Sept. 14, 2000.

Paperwork Reduction Act

This Report and Order contains new information collection(s) subject to the PRA of 1995, Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA, with a request for emergency approval. OMB, the general public, and other Federal agencies are invited to comment. Public and agency comments are due December 26, 2000. Comments should address: (a) whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–XXXX.

Title: Compatibility Between Cable Systems and Consumer Electronics Equipment.

Form No.: Not Applicable.

Type of Review: New Collection.

Respondents: Business or other for profit.

Number of Respondents: 102.

Estimated Time Per Response: 10–80 hours.

Total Annual Burden: Varies by year and information collection (for progress reports, burden is 160 hours in 2000 and 320 hours per year in 2001 and 2002; for labeling, burden is 1,400 hours in 2001 and 1,000 hours/year in each later year).

Cost to Respondents: Progress reports total cost is $12,000 in 2000 and $24,000/year in each of 2001 and 2002. Labeling total cost is $28,000 in 2001 and $25,000/year in future years.

Needs and Uses: The labeling requirements will ensure that consumers understand the capability of digital television equipment to operate with cable television systems. This will not only aid consumers in making informed purchasing decisions with respect to DTV equipment but also promote the overall transition from analog to digital television. The progress reports will allow the Commission to monitor industry development of specifications for the Digital Cable Ready 3 receiver, as well as tracking industry progress in implementing earlier agreements on technical standards for direct connection of digital television receivers to digital cable systems and on providing tuning and program scheduling information (Program and Scheduling Information Protocol or ''PSIP'' information) to support the navigation function of DTV receivers. Through oversight and identification of outstanding areas of disagreement, the Commission will be able to encourage the industries to reach agreement on and put into effect specifications for DTV products that will offer major benefits to American consumers.

Final Regulatory Flexibility Certification

The Regulatory Flexibility Act (RFA) [1] requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' [2] The *Notice of Proposed Rulemaking* (NPRM) [3] in this proceeding proposed rules to resolve outstanding compatibility issues between cable television systems and consumer electronics equipment, in particular, requirements for labeling digital television (DTV) receivers to describe their capabilities to operate with digital cable television systems, and questions regarding licensing terms for copy protection technology. Out of an abundance of caution, the Commission published an Initial Regulatory Flexibility Analysis (IRFA) in the *NPRM,* even though the Commission was reasonably confident that any economic effect on small entities would be minimal. The IRFA sought written public comment on the proposed rules and our tentative conclusions in the IRFA. We received one written comment in response to the IRFA, from the U.S. Small Business Administration (SBA).[4]

As noted, the *NPRM* in this proceeding raised two issues—labeling of digital television receivers and copy protection technology licensing terms. The second issue has now been moved to another proceeding and resolved therein via a declaratory ruling.[5] The present *Report and Order* addresses only the labeling of ''consumer electronics TV receiving devices, including TV receivers, videocassette recorders, and similar devices, that include digital video signal processing capability and incorporate features intended to be used with digital cable television service.'' The impact of the rules adopted is thus on manufacturers of consumer electronics TV receiving devices. The rules do not mandate any particular design or set of features for this equipment. They merely require manufacturers to attach specified labels to receiving devices that provide certain sets of features. Of course, manufacturers of consumer electronics TV receiving devices already package and label their products with various descriptive captions. Moreover, we believe that manufacturers generally find it in their interest to ensure that consumers understand the capabilities of the product being offered for sale. Hence, manufacturers actually have commercial incentives to label their products clearly. (Concomitantly, consumers also benefit from the information in product labels.) For these reasons, and for reasons we discuss additionally below, we certify, pursuant to the RFA, that the labeling requirements adopted in the present *Report and Order* will not have a significant economic impact on a substantial number of small entities. The *Report and Order* directs the National Cable Television Association and the Consumer Electronics Association to file reports with the Commission on November 30, 2000, April 30, 2001, October 31, 2001, April 30, 2002, and October 31, 2002 detailing the progress of their efforts to develop standards for a bidirectional direct connection DTV receiver and their progress in implementing their February 2000 agreements on technical requirements for direct connection of digital television receivers to digital cable systems and on provision of tuning and program scheduling information to support the navigation functions of DTV receivers. Because the requirements apply only to these two trade associations, which together do not constitute a substantial number of entities, we certify, pursuant to the RFA, that the reporting requirements will not have a significant impact on a substantial number of small entities.

On the labeling issue as described in the IRFA, the SBA stated, ''The Commission * * * asserts that its labeling rules would have a minimal impact, because labeling would be standardized, costs would be spread over sufficient quantities of goods as to be insubstantial, and manufacturers could pass costs on to their subscribers. But this ignores the differences in output or customer base that may exist between a small company and a large company. A business with less output or fewer customers might find its per unit costs are higher. The Commission should explore any such potential cost discrepancies based on business size, not simply dismiss them as minimal.'' As described in the *Report and Order,* pursuant to the new rule, manufacturers must label the pertinent products with labels that meet the requirements of § 2.925 of the Commission's rules, 47 CFR 2.925. Manufacturers of transceivers must already label their equipment to demonstrate compliance with the Commission's equipment authorization rules. Such labels must ''be permanently affixed to the equipment and * * * be readily visible

[1] The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] *See* 5 U.S.C. 605(b).

[3] *Notice of Proposed Rulemaking,* Compatibility Between Cable Systems and Consumer Electronics Equipment, PP Docket No. 00–67, FCC 00–137; *see also* 65 F.R. 24671 (April 27, 2000).

[4] Comment by the Office of Advocacy, SBA, dated May 24, 2000.

[5] *See Further Notice of Proposed Rulemaking, Memorandum Opinion & Order, and Declaratory Ruling* in CS Docket No. 97–80, Implementation of Section 304 of the Telecommunications Act of 1996—Commercial Availability of Navigation Devices, FCC 00–341, adopted Sept. 14, 2000.

to the purchaser at the time of purchase.'' Section 2.925(d). The manufacturer may choose the means to make the label permanent, including using a nameplate (of material of the manufacturer's choosing) fastened to the equipment with a permanent adhesive. While we do not wish to favor one type of labeling choice over another, we note that use of an adhesive label containing the additional information at issue should not create a significant economic impact for any manufacturer, and in fact probably represents an insignificant economic impact. The cost of paper labels with adhesive, containing brief information specified by rule, would appear to be minimal. Finally, the rules permit manufacturers to request alternative means of labeling. Section 2.925(e).

The Commission will send a copy of the present *Report and Order,* including a copy of this final certification, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order,* including a copy of this final certification, to the Chief Counsel for Advocacy of the SBA.

List of Subjects in 47 CFR Part 15

Labeling.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends part 15 of title 47 of the Code of Federal Regulations as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 is revised to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307, 336, and 544A.

2. Section 15.3 is amended by revising the last sentence in paragraph (aa) to read as follows:

§ 15.3 Definitions.

* * * * *

(aa) * * * Such equipment shall comply with the technical standards specified in § 15.118 and the provisions of § 15.19(d).

* * * * *

3. Section 15.19 paragraph (d) is amended by adding paragraphs (d)(1), (d)(2), (d)(3), and (d)(4) to read as follows:

§ 15.19 Labelling requirements.

(d) * * *

(1) Consumer electronics TV receiving devices, including TV receivers, videocassette recorders, and similar devices, that include digital video signal processing capability and incorporate features intended to be used with digital cable television service, but do not provide one or more of the feature sets described in paragraph (d)(2) of this section shall not be marketed with terminology that describes the device as ''cable ready'' or ''cable compatible'' or otherwise conveys the impression that the device is fully compatible with digital cable service. Devices marketed as ''digital cable ready'' or ''digital cable compatible'' or otherwise conveying the impression that the device is fully compatible with digital cable service must offer one or more of the feature sets (*i.e.,* Digital Cable Ready 1, Digital Cable Ready 2, Digital Cable Ready 3) specified in paragraph (d)(2) of this section and carry the corresponding descriptive label or labels. With respect to their analog signal processing capabilities, these devices must also comply with the technical standards for cable ready equipment set forth in § 15.118. Devices not marketed as ''digital cable ready'' or ''digital cable compatible'' may be accompanied by factual statements about the various features of the devices that are intended for use with digital cable service and/or the quality of such features, provided that such statements do not imply that the device is fully compatible with digital cable service. Statements relating to product features are generally acceptable where they are limited to one or more specific features of a device, rather than the device as a whole.

(2) Descriptive Labels for consumer electronics TV receiving devices with digital signal processing capability.

(i) Digital Cable Ready 1 refers to a consumer electronics TV receiving device capable of receiving analog basic, digital basic and digital premium cable television programming by direct connection to a cable system providing digital programming. This device does not have a 1394 connector or other digital interface. A security card (or POD) provided by the cable operator is required to view encrypted programming.

(ii) Digital Cable Ready 2 refers to a consumer electronics TV receiving device capable of receiving analog basic, digital basic and digital premium cable television programming by direct connection to a cable system providing digital programming. This receiving device will incorporate all features defined in Digital Cable Ready 1 and will also include the 1394 digital interface connector. A security card (or POD) provided by the cable operator is required to view encrypted programming.

(iii) Digital Cable Ready 3 refers to a consumer electronics TV receiving device capable of receiving analog basic, digital basic and digital premium cable television programming. This device will incorporate all features defined in Digital Cable Ready 1 and will also receive advanced and interactive digital services by direct connection to a cable system providing digital programming and advanced and interactive digital services and programming. A security card (or POD) provided by the cable operator is required to view encrypted programming.

(3) Consumer electronics TV receiving devices, including TV receivers, videocassette recorders, and similar devices, that include digital video signal processing capability and that provide one or more of the feature sets (*i.e.,* Digital Cable Ready 1, Digital Cable Ready 2, Digital Cable Ready 3) described in paragraph (d)(2) of this section, must carry the label or labels from paragraph (d)(2) of this section that describe the feature sets offered by the device. The format of the label or labels shall conform to the provisions of § 2.925 (d) and (e) of this chapter.

(4) The requirements of this section apply to consumer TV receivers, videocassette recorders and similar devices manufactured or imported for sale in this country on or after July 1, 2001.

4. Section 15.118 is amended by adding a new sentence at the end of paragraph (a) to read as follows:

§ 15.118 Cable ready consumer electronics equipment.

(a) * * * Until such time as generally accepted testing standards are developed, paragraphs (c) and (d) of this section will apply only to the analog portion of covered consumer electronics TV receiving equipment.

* * * * *

[FR Doc. 00–27732 Filed 10–26–00; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 65, No. 209
Friday, October 27, 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 THE TREASURY

Office of Thrift Supervision

12 CFR Part 584

[Docket No. 2000–91]

RIN 1550–AB29

Savings and Loan Holding Companies Notice of Significant Transactions or Activities and OTS Review of Capital Adequacy

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to require certain savings and loan holding companies to notify OTS before engaging in or committing to engage in a limited set of debt transactions, transactions that reduce capital, some asset acquisitions, and other transactions. The proposal would generally exclude holding companies whose subsidiary savings associations' assets represent a small percent of consolidated assets and holding companies that would have consolidated tangible capital of ten percent or greater following the transaction.

OTS also seeks comment on its proposal to codify its current practices for reviewing the capital adequacy of savings and loan holding companies and, when necessary, requiring additional capital on a case-by-case basis. This notice identifies certain key factors that OTS uses to evaluate the need for additional holding company capital.

DATES: Comments must be received on or before December 26, 2000.

ADDRESSES:

Mail: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2000–91.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9:00 a.m. to 4:00 p.m. on business days, Attention Docket No. 2000–91.

Facsimiles: Send facsimile transmissions to FAX Number (202) 906–7755, Attention Docket No. 2000–91; or (202) 906–6956 (if comments are over 25 pages).

E-Mail: Send e-mails to ''public.info@ots.treas.gov'', Attention Docket No. 2000–91, and include your name and telephone number.

Public Inspection: Interested persons may inspect comments at the Public Reference Room, 1700 G St. NW., from 10 a.m. until 4 p.m. on Tuesdays and Thursdays or obtain comments and/or an index of comments by facsimile by telephoning the Public Reference Room at (202) 906–5900 from 9 a.m. until 5 on business days. Comments and the related index will also be posted on the OTS Internet Site at ''www.ots.treas.gov''.

FOR FURTHER INFORMATION CONTACT: Kevin O'Connell, Senior Project Manager, (202) 906–5693, Supervision Policy; and Valerie J. Lithotomos, Counsel (Banking and Finance), (202) 906–6439, Regulations and Legislation Division, and Richard L. Little, Senior Counsel, (202) 906–6447, Business Transactions Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The financial stability and health of a savings and loan holding company can have a direct impact on the financial condition of its subsidiary thrift. Savings and loan holding companies are frequently managed on a consolidated basis with their subsidiaries. Indeed, the benefits from such integration are key incentives for establishing holding companies. However, because of such integrated operations, problems in one entity in the corporate structure may affect other affiliated entities, including the thrift.

Increasingly, savings associations are becoming parts of highly integrated corporate structures. Instead of being held as passive investments, thrifts are acquired as a key component of an overall strategy for providing comprehensive services. These affiliations often involve outsourcing of critical functions of the savings association and cross-marketing of products. As a result, many savings associations are subject to decisions that are made with regard to the best interests of the corporate structure, often with little consideration of any potential positive or negative impact on the thrift standing alone. This highlights the need for increased supervisory vigilance to ensure that actions by an affiliate do not pose a material risk to the safety, soundness, or stability of the subsidiary savings association.

Actions by the savings and loan holding company, in particular, can affect the condition of its subsidiary thrift, especially where the parent organization undertakes significant new activities or has significant debt exposure. For example, the practice of double leveraging—where holding company debt is used to increase the capital of the subsidiary thrift—can generate the need for additional regulatory oversight at the savings and loan holding company level, especially when consolidated capital levels are low. In addition, a holding company that makes risky investments that generate less than anticipated returns or result in losses can exert undue pressure on the thrift to meet the demands of its other obligations. Similarly, a holding company that grows too fast may not have sufficient capital to support its operations and may, therefore, incur excessive debt or look to the thrift to fund its operations.

To address these issues, OTS is proposing to require certain holding companies to notify OTS before engaging in certain described debt transactions, transactions that reduce capital, some asset acquisitions, and other transactions determined by OTS on a case-by-case basis. This proposal is described in Section I. of this notice of proposed rulemaking (NPRM). OTS is also considering whether to codify its current practice for reviewing the capital adequacy of savings and loan holding companies and, when necessary, requiring additional capital on a case-by-case basis. OTS seeks comment on the factors it considers in determining the appropriate capital level. The capital considerations are described in Section II. of this NPRM.

I. Notice of Significant Transactions or Activities

Currently, OTS does not analyze proposed major transactions by holding companies before the transactions occur, other than in connection with reviewing applications for a limited group of transactions.[1] Moreover, there are few regulatory and statutory restrictions designed to reduce the risks posed to thrifts by such proposed transactions, other than capital distribution and various restrictions[2] on transactions with affiliates.[3]

On several occasions, OTS has learned during an examination or through the news or other media that a holding company has engaged in or has committed to engage in major transactions or activities that may have a substantial negative effect on the subsidiary thrift. By that point, however, OTS's ability to require the holding company to reverse or modify the transaction to protect the safety and soundness of the thrift may be limited.

To adequately monitor these types of transactions and to ensure that thrifts are adequately protected, OTS proposes to review significant holding company transactions and activities of certain holding companies before they occur in order to ensure that these transactions and activities do not pose a material risk to the financial safety, soundness, or stability of the subsidiary savings association. OTS notes that the Federal Reserve Board (FRB) does not have a similar review procedure. However, FRB requires bank holding companies to comply with detailed and static capital adequacy requirements[4] which generally makes a similar review process unnecessary. Rather than impose an across-the-board capital requirement, OTS is proposing this review process for a limited group of savings and loan holding companies engaging in a limited group of activities in order to ensure the safety and soundness of subsidiary thrifts.

OTS bases this rulemaking on its extensive statutory authority over savings and loan holding companies under section 10 of the Home Owners' Loan Act (HOLA). OTS, for example, is authorized to issue such regulations or orders as are ''necessary and appropriate'' to administer and carry out section 10 of the HOLA,[5] and also has general statutory authority to prescribe regulations necessary for carrying out all provisions of the HOLA.[6]

Accordingly, OTS is proposing to require that certain savings and loan holding companies notify OTS before engaging in several types of transactions, as more fully described below in the section-by-section summary. OTS seeks comment on all aspects of the proposal. OTS is particularly interested in whether the proposed notice procedure is the best way for OTS to obtain timely information regarding significant transactions and activities, while imposing the least possible regulatory burden.

Section-by-Section Analysis

Proposed Section 584.100—What Does This Subpart Do?

The proposed rule would add a new subpart B, entitled Notice of Significant Activities or Transactions, to part 584. Proposed § 584.100 states that subpart B requires certain savings and loan holding companies to notify OTS before engaging in or committing to engage in certain significant activities or transactions. Proposed § 584.100 also sets out the definitions that apply to the new subpart.[7]

Proposed Section 584.110—Must I File a Notice?

The purpose of the proposed rule is to ensure that OTS has adequate notice and an opportunity to object when a savings and loan holding company is about to engage in an activity that could have a material negative effect on the subsidiary savings association. While it is often a relatively simple matter to identify problem holding companies and holding companies that control troubled thrifts, it is far more difficult to predict which holding companies may engage in transactions that could raise supervisory concerns for their subsidiary thrifts. To ensure that the regulation is properly focused, OTS will exempt two classes of holding companies because their activities are unlikely to materially affect the subsidiary thrift. Similarly, OTS will only require notices for those activities and transactions that are significant in nature and reasonably present a potential for an adverse impact on the thrift institution. These activities and transactions are described below in proposed § 584.120.

The proposed rule would require savings and loan holding companies whose proposed transactions meet the standards in proposed § 584.120, to file a notice, with two exceptions. First, OTS would not require a holding company to file a notice if all of its subsidiary thrifts have consolidated assets that, when aggregated, represent less than 20 percent of the holding company's consolidated assets. This percentage indicates that all of the subsidiary thrifts constitute a small share of the holding company's overall business. In these structures, the regulated thrifts are not the primary line of business of the consolidated parent organization and, therefore, are less likely to be affected by the transactions covered by the proposal. OTS specifically requests comment on whether this percentage is appropriate. OTS also asks whether it should rely on other existing regulatory definitions, such as the definition of diversified savings and loan holding company,[8] to describe situations where the thrift is not the primary line of business of the parent holding company.

Second, a holding company would not be required to file a notice if it has a significant capital cushion. Where a holding company has a significant capital base, it is less likely that its transactions will present a significant risk to the subsidiary thrift. OTS

[1] For example, when a company files an application to acquire an existing thrift or to charter a de novo thrift, OTS reviews the proposed business plan to ensure that the activities of the holding company (and its affiliates) will not have a negative impact on the subsidiary thrift. OTS has required some holding companies, as a condition to the approval of the application, to notify the agency before the holding company causes the subsidiary thrift to make any material changes in the subsidiary thrift's business plan. Conversely, however, when a holding company purchases a subsidiary, even if that entity is large, highly leveraged and engaging in high-risk activities, no notice is required under current regulation.

[2] *See* 12 U.S.C. 1831o(d)(1)(B); 12 CFR part 563, subpart E. *See also* 12 U.S.C. 1467a(f).

[3] *See* 12 U.S.C. 1468; 12 U.S.C. 371c and 371c–1; 12 CFR 563.41 and 563.42.

[4] *See* 12 CFR part 225, Appendix A.

[5] *See e.g.,* 12 U.S.C. 1467a(g).

[6] 12 U.S.C. 1462a. *See also* 12 U.S.C. 1463(a)(2) and 12 U.S.C. 1464(a). OTS notes that sections 10(g)(5) and 10 (p) of the HOLA expressly permit OTS to restrict the ability of savings and loan holding companies to continue to conduct certain activities. 12 U.S.C. 1467a(g)(5) and (p). In this regard, the focus of the proposed rule and sections 10(g)(5) and 10 (p) are entirely different. The proposed notice is primarily preventive. It is designed to permit OTS to review proposed activities and to prevent a savings and loan holding company (or its affiliate) from undertaking new, risky activities. On the other hand, sections 10(g) and (p) are remedial. These statutes are designed to allow OTS to require corrective action when established, ongoing activities threaten the safety and soundness of a subsidiary thrift.

[7] As a result of its placement in part 584, all of the definitions in 12 CFR part 583 (''*e.g.,* subsidiary'') would also apply to the new subpart.

[8] A diversified savings and loan holding company is ''any savings and loan holding company whose subsidiary savings association and related activities under 12 U.S.C. 1467a(c)(2) represent on either an actual or pro forma basis, less than 50 percent of its consolidated net worth at the close of its preceding fiscal year and of its consolidated net earnings for such fiscal year.'' 12 CFR 583.11 and 12 U.S.C. 1467a(a)(1)(F).

proposes to exclude those savings and loan holding companies that would have consolidated tangible capital of ten percent or greater following the proposed transaction. This exclusion is not intended, in any way, as a *de facto* capital requirement for savings and loan holding companies. Rather, the purpose of this proposed exclusion is solely to exclude the most financially sound holding companies from the notice requirement. OTS specifically requests comment on whether this percentage is appropriate.

OTS specifically seeks comment on whether it is also appropriate to exempt holding companies that control only savings associations with limited operations (*e.g.*, a subsidiary thrift that conducts only fiduciary operations under part 550 of OTS's regulations). If so, what types of thrifts should be exempted?

Notwithstanding the two exceptions discussed above, an OTS Regional Director would have the authority to require any savings and loan holding company to file a notice if the Regional Director has concerns relating to the holding company's financial condition or the safety and soundness of its subsidiary thrift. The proposed rule would require the Regional Director to notify the holding company, in writing, of this determination.

Proposed Section 584.120—What Transactions or Activities Require a Notice?

The proposed rule would identify three categories of activities or transactions that would require the filing of a notice by a holding company described in proposed § 584.110. These activities and transactions would include: the issuance, renewal or guarantee of a certain level of debt; any activity or transaction resulting in a substantial reduction of capital; and certain asset acquisitions. Subject to specified quantitative thresholds, OTS believes these three areas would identify any major change on a holding company's balance sheet—namely, acquisitions of assets, increases in liabilities, or reductions in capital—that could have a material negative impact on the thrift. In addition to these three areas, OTS Regional Directors would have the discretion to inform a holding company in writing that a transaction or activity would pose a risk to the financial safety, soundness, or stability of the thrift and require the holding company to file a notice.

OTS proposes to require a notice if the holding company or any of its subsidiaries (other than the subsidiary thrift) will issue, renew or guarantee a certain level of debt.[9] Debt will trigger the notice requirement only if two criteria are met. First, the debt, when combined with all other debt transactions conducted by the holding company or any of its subsidiaries (other than a subsidiary thrift) during the past twelve months, must increase the amount of the holding company's consolidated non-thrift liabilities by five percent or more.[10] Second, the holding company's consolidated non-thrift liabilities after the debt transaction would have to equal 50 percent or more of the holding company's consolidated tangible capital.[11]

The following example illustrates the application of these criteria. On October 1, 1999, a holding company's consolidated non-thrift liabilities were $1.0 billion. The holding company plans to incur an additional $40 million in debt on September 30, 2000. On that date, the holding company projects that its consolidated non-thrift liabilities would increase to $1.06 billion. (This $60 million increase is made up of the $40 million in new debt issuance plus another $20 million in liabilities accrued during the prior 12 months). As of September 30, 2000, the holding company's consolidated tangible capital would stand at $1.8 billion. This holding company would be required to file a notice with OTS because both of the following conditions are met:

- With the new debt, the holding company's consolidated non-thrift liabilities would have increased by more than five percent during the prior twelve-month period. Under this example, the holding company's consolidated non-thrift liabilities would increase six percent from $1.0 billion to $1.06 billion.
- The holding company's consolidated non-thrift liabilities exceed 50 percent of its consolidated tangible capital. Under the example, the holding company's consolidated non-thrift liabilities would equal $1.06 billion on September 30, 2000. This amount exceeds $900 million (50 percent of $1.8 billion, the holding company's consolidated tangible capital).

A notice is also required for certain asset acquisitions by the holding company or its subsidiary (other than a subsidiary thrift). Under the proposed rule, an acquisition of assets (other than cash, cash equivalents, and securities or other obligations unconditionally guaranteed by the United States Government) would require a notice if the amount of the transaction would exceed fifteen percent of the holding company's consolidated assets. In determining whether the fifteen percent threshold is met, the holding company must combine the proposed transaction with all other asset acquisitions conducted during the past twelve months.

OTS also would require a notice if a holding company or its subsidiary (other than the subsidiary thrift) proposes to conduct any transaction, which when combined with all other transactions during the past twelve months, would reduce the ratio of the holding company's consolidated tangible capital to consolidated tangible assets[12] by ten percent or more. For example, a projected change of this ratio from 8 percent to 7.2 percent would trigger the notice requirement. To ensure adequate supervisory review, the proposed rule would require a holding company with negative consolidated tangible capital to file a notice, unless the Regional Director informs the holding company, in writing, that a notice is not required.

OTS requests comment on the transactions and activities that would require notice. Specifically:

- Has OTS appropriately identified the scope of proposed transactions and activities that may pose a material risk to the financial safety, soundness, or stability of the subsidiary savings association?
- What additional transactions or activities should require a notice? For example, should OTS require a notice when a savings and loan holding company or its subsidiary enters a new line of business or divests a significant asset or line of business? If so, how should OTS define new lines of business and the appropriate thresholds that would trigger a notice?
- Should all transactions by holding companies with negative consolidated tangible capital require a notice?
- Are the applicable percentages or numerical thresholds appropriate?
- In computing the thresholds under the proposed rule, a holding company must combine a proposed transaction with all other transactions within the three relevant categories (acquisitions of assets, increases in liabilities, and

[9] Debt of the subsidiary thrift includes debt of its consolidated subsidiaries.

[10] Consolidated non-thrift liabilities would be defined as the holding company's consolidated liabilities less the consolidated liabilities of the subsidiary savings associations.

[11] For the purposes of this rule, consolidated tangible capital would be defined as consolidated capital minus consolidated intangible assets and deferred policy acquisition costs.

[12] Consolidated tangible assets would be defined as the holding company's consolidated assets less its consolidated intangible assets and deferred policy acquisition costs.

reductions in capital) conducted during the prior twelve month period. Thus, once the threshold is met, the proposed rule would require a notice even though a proposed transaction itself is small. Should the rule exclude *de minimus* transactions? If so, what transactions should be considered *de minimus*?

As noted above, OTS Regional Directors would have the discretion to require notices for other transactions or activities. In identifying significant transactions, OTS has relied upon quantified changes to the holding company's balance sheet. Some transactions with significant long-term consequences, however, may not have any immediate impact on the holding company's balance sheet. These transactions would include recourse transactions and certain guarantees. These transactions are examples of when the Regional Directors might exercise their discretionary authority to require notices.

Proposed Section 584.130—How Do I File My Notice?

Under the proposed rule, a savings and loan holding company would be required to file a written notice with its OTS Regional Office at least 30 days before the earlier of engaging in or committing to engage in the transaction or activity. The holding company would be required to include the basis for the filing requirement, a description of the transaction or activity, the purpose of the transaction or activity, an analysis of the impact on consolidated earnings and consolidated capital, and an analysis of its impact on the subsidiary savings association. The holding company would also be required to identify the amount of the debt, capital reduction or asset acquisition, indicate the intended use of the funds or the reasons for the capital reduction or asset acquisition, and summarize the relevant terms of the transaction (including a description of any significant covenants or collateral requirements). OTS specifically requests comment on whether the information in the proposed notice is necessary and sufficient to enable OTS to accurately assess the transaction's impact on the subsidiary thrift.

To minimize regulatory burden, the proposed rule would permit a holding company to file a schedule proposing transactions or activities over a specified period, not to exceed twelve months. If OTS approves the proposed schedule, the holding company would be permitted to engage in the proposed transactions or activities without filing another notice for that twelve month period. If there has been a material change in circumstances, the OTS Regional Director may advise the holding company, in writing, that it must file a new notice for scheduled activities or transactions. *See* proposed § 584.150(c).

A savings and loan holding company may also combine a notice with a related notice or application. To do so, the holding company must state that the related notice or application is intended to serve as a notice under proposed § 584.120, and must submit the notice or application in a timely manner.

Proposed Section 584.140—On What Grounds Will OTS Disapprove or Condition the Proposed Activity or Transaction?

Under the proposed rule, the OTS Regional Director could disapprove or condition a proposed transaction if a proposed transaction or activity would pose a material risk to the financial safety, soundness, or stability of the subsidiary thrift. In making this determination, the OTS Regional Director would consider, among other things, the following factors:

- The extent to which the transaction or activity is funded by debt, and on what terms.
- The effect of the transaction or activity on the cash flow and liquidity of the thrift.
- The impact of the transaction or activity on the risk to the overall organization.
- Whether the transaction or activity is self-sustaining or requires financial support from other business segments, especially the subsidiary savings association.
- The projected effect of the transaction or activity on the capital and earnings of the consolidated entity.

These factors are not exclusive. The OTS Regional Director may consider other factors deemed relevant and may impose appropriate conditions on the transaction. OTS requests comment on whether these factors are appropriate considerations in determining whether to disapprove or condition a notice, and whether additional factors should be added.

Proposed Section 584.150—When May I Engage in the Proposed Activity or Transaction?

The savings and loan holding company (or its subsidiary) would be permitted to engage in the activity or transaction 30 days after OTS receives all required information, unless OTS notifies the holding company, in writing, that it has disapproved the notice. OTS would be permitted to extend the 30 day review period for an additional 30 days. The holding company (or its subsidiary) could engage in the proposed activity or transaction earlier if OTS notifies the holding company, in writing, that OTS does not intend to disapprove the notice.

II. OTS's Practice for Reviewing Capital Adequacy for Savings and Loan Holding Companies

The level and composition of capital held by a company is an important measure of the company's overall financial health, as well as the health of its subsidiaries. For financial institutions, capital serves several purposes: it is available to bear risk and absorb unexpected losses; it protects the Federal Deposit Insurance Corporation's insurance fund; it provides a permanent source of revenue for the shareholders and funding for the institution; it provides a base for further growth; and it gives the shareholders assurance that the financial institution is managed in a safe and sound manner.

Capital adequacy is one of the critical factors that Federal banking agencies consider in the regulation of financial institutions' holding companies. FRB, for example, has required bank holding companies to comply with specific capital adequacy guidelines since 1983.[13] While OTS has not established, and is not proposing to establish, capital guidelines applicable to all savings and loan holding companies, OTS reviews the financial resources of a savings and loan holding company, including capital adequacy, in the examination and supervisory processes. OTS also reviews the financial resources of prospective holding companies in evaluating holding company and other applications, and has the authority to require additional capital on a case-by-case basis.

Low levels of holding company capital can raise supervisory concerns in a number of ways. For example, in one situation, a highly leveraged holding company began to have severe cash flow problems during the real estate crisis in the early to mid-90s. As a result, creditors canceled lines of credit and the holding company came close to defaulting on its obligations. The holding company's cash flow needs caused the thrift to adopt riskier lending and aggressive pricing strategies to enable it to fund the holding company's operations through the payment of dividends and tax sharing payments. As a result, the thrift's asset quality and its financial condition deteriorated.

[13] These guidelines are at 12 CFR part 225, Appendix A.

In another situation, the holding company engaged in the practice of double leveraging to facilitate the subsidiary thrift's purchase of additional branches. The holding company sought to fund the branch acquisitions, in part, by issuing a substantial amount of new debt. As a result of the transaction, the holding company's capital significantly reduced both on a relative basis, due to the growth in assets, and on a tangible level, since the branch purchase resulted in goodwill. The sharply reduced level of tangible capital raised concerns about the holding company's ability to service the debt without making undue demands on the thrift. In this instance, however, OTS was able to address these concerns by conditioning the approval of the thrift's purchase on the holding company maintaining an agreed upon level of capital.

OTS would have similar concerns if a holding company decided to quickly expand the scope of its business without a similar increase in its capital base. For example, a holding company that doubled in size while maintaining the same amount of capital would reduce its capital to assets ratio by 50%. With a smaller capital cushion, the holding company would have less flexibility to react to unexpected, adverse market conditions. A smaller capital cushion would also limit the holding company's ability to come to the aid of its subsidiary thrift, and if the holding company itself came under financial distress, would increase the chances it would pressure the thrift for financial resources.

In the course of its supervisory monitoring and examination of savings and loan holding companies, OTS currently reviews the financial condition, including the capital adequacy, of holding companies. In cases like those discussed above, OTS may require the holding company to maintain a specified level of capital. This gives OTS an additional tool to safeguard thrifts without unduly restricting the business objectives of holding companies.

OTS is considering whether it should adopt a rule codifying its current practice for reviewing capital adequacy, on a case-by-case basis, and, when necessary, requiring additional capital for savings and loan holding companies. Such a rule would also clarify the factors that OTS uses in reviewing a holding company's capital adequacy, would promote a better understanding of OTS's supervisory approach, and would help to ensure that capital principles are consistently applied in the holding company context.

As noted above, OTS has extensive regulatory authority under the HOLA to regulate savings and loan holding companies. This authority includes its powers under section 10(g)(1) [14] to issue such regulations necessary or appropriate to ensure compliance with and prevent evasions of section 10,[15] and its general rulemaking authority under the HOLA.[16]

While the factors OTS may consider in its review of capital will vary from case-to-case, the following factors are relevant, but not all-inclusive, in determining whether capital is adequate and if additional capital is necessary for a savings and loan holding company:

Debt

• What is the ratio of holding company consolidated debt as a percentage of consolidated tangible capital? Is the level of debt generally rising? What investments or activities does the debt fund? Could the terms, conditions or covenants of the debt have an adverse effect on the thrift? What is the level of interest expense? Is the interest expense a significant percentage of recurring income? What debt ratings has the holding company received from nationally recognized credit rating organizations?

Capital

• How much consolidated tangible capital does the holding company have as a percentage of consolidated tangible assets? What are the overall quality and composition of the holding company's capital? Does the holding company rely on hybrid instruments that possess debt characteristics? Does the holding company have the ability to raise new equity capital or generate capital internally?

Cash Flow and Earnings

• Does the holding company have sufficient cash flow? To what extent does the holding company rely on dividends from the thrift to service the holding company's debt or fulfill other holding company obligations? What sources of liquidity, other than the thrift, does the holding company have? What are the quality and quantity of such sources?

• What are the quality and level of the holding company's earnings? Does the holding company rely on non-recurring sources of earnings? How does the volatility of earnings affect pro forma business plan projections? Has the holding company stress tested its projections?

Overall Risk Profile

• How significant is the thrift in the holding company's corporate structure? What risks do the holding company's activities and assets present? What significant risk does the thrift face? Has the holding company influenced the thrift to engage in riskier activities? Does the holding company have off-balance sheet contracts or activities that result in a high degree of risk exposure? What level of inter-company transactions do the holding company and other affiliates have with the thrift? What is the quality of management and risk management systems? Is the overall financial condition of the holding company deteriorating, stable, or improving?

OTS specifically requests comment on whether the listed factors are relevant to OTS's review of capital adequacy. OTS also solicits comment on whether other factors would be relevant to OTS's review.

OTS has not decided whether it will promulgate a final rule addressing holding company capital in connection with this rulemaking or whether it will use the comments provided as the basis for a future proposal. However, as part of today's proposal, it is OTS's intent to describe its current approach to holding company capital, in sufficient detail, to support a final rule codifying the practice.

OTS intends to use different procedures for requiring additional capital, depending on the circumstances. For example, in the application process, OTS may condition the approval of an application on a holding company maintaining a certain capital level. In other instances, OTS would notify a savings and loan holding company of a determination that additional capital may be appropriate. The notice would include such information as the amount of capital needed, a proposed schedule for compliance, and the specific reasons why OTS believes that additional capital is necessary or appropriate. OTS would also provide the savings and loan holding company with an opportunity to respond and to provide additional information for OTS to consider in establishing the capital standard. OTS requests specific comment on whether these procedures would be appropriate.

III. Request for Comments

In addition to the specific request for comment in the preamble, OTS invites comment on all aspects of the Notice of Proposed Rulemaking.

[14] 12 U.S.C. 1467a(g)(1).

[15] 12 U.S.C. 1467a.

[16] 12 U.S.C. 1462a(b), 1463(a) and 1464.

IV. Plain Language Requirement

Section 722 of the Gramm-Leach-Bliley (GLB) Act (12 U.S.C. 4809) requires federal banking agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposed rule easier to understand. For example:

(1) Have we organized the material to suit your needs?

(2) Are the requirements in the rule clearly stated?

(3) Does the rule contain technical language or jargon that isn't clear?

(4) Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

(5) Would more (but shorter) sections be better?

(6) What else could we do to make the rule easier to understand?

V. Executive Order 12866

The Director of OTS has determined that this proposed rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866. OTS intends to exempt a substantial percentage of savings and loan holding companies from the notice requirement and would require a notice for a limited number of transactions. Nevertheless, OTS acknowledges that the rule would impose costs on savings and loan holding companies that are required to file a notice requirement. Therefore, OTS invites the thrift industry to provide any cost estimates and related data that it thinks would be useful to OTS in evaluating the overall costs of the rule.

VI. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 [17] requires federal agencies to prepare an initial regulatory flexibility analysis (IRFA) with a proposed rule, or certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. OTS cannot, at this time, determine whether this proposed rule would have a significant economic impact on a substantial number of small entities. Therefore, OTS includes the following IRFA.

A description of the reasons why OTS is considering the proposed rule, a statement of the objectives of the proposal, and the legal basis for the proposed rule are contained in the supplementary material above.

[17] 5 U.S.C. 601.

A. Small Entities to Which the Proposed Rule Would Apply

1. Background.

The proposed rule would apply to savings and loan holding companies and subsidiaries of savings and loan holding companies (other than savings association subsidiaries). A savings and loan holding company would be required to file a notice before it or its non-thrift subsidiary may engage in specified activities. While a subsidiary of a savings and loan holding company would not be required to file a notice, OTS could, by disapproving a notice, prevent the subsidiary from engaging in certain proposed actions.[18]

The proposed rule would apply to savings and loan holding companies and their subsidiaries, regardless of size. The rule, however, includes a significant exemption that would substantially limit its application to small businesses. This exception is discussed below.

OTS analysis of savings and loan holding companies and their non-thrift subsidiaries is complicated by the fact that these entities may engage in a wide range of activities. The Small Business Administration (SBA) applies different size standards for various industries in order to determine whether a particular business is small.[19] OTS has reviewed the activities of its holding companies to determine if there is a prevailing standard that it may apply in this rulemaking.

Based on data for publicly traded holding companies,[20] OTS estimates that the primary asset of approximately 78.2 percent of all holding companies is the thrift. These holding companies would likely fall within one of two SBA size standards: (1) The size standard for offices of bank holding companies and offices of other holding companies (annual receipts of less than $5 million); [21] or (2) The size standard for depository credit intermediation (less than $100 million in assets). An additional 13.8 percent of savings and loan holding companies are engaged in financial management activities (insurance, brokerage, or real estate development). The prevailing SBA size standard for these companies is less than $5 million in annual receipts.[22] The remaining holding companies engage in a variety of diverse commercial activities for which no consistent size standard is evident. Accordingly, OTS has analyzed its available data by applying two size standards—the $5 million in annual receipts and the $100 million in assets size standards.[23]

2. Analysis

Based on March 31, 2000 data, OTS calculates that there are approximately 959 savings and loan holding companies. The 959 holding companies are aligned in approximately 531 holding company structures for the purposes of this analysis. A thrift may be directly or indirectly controlled by more than one holding company. A holding company structure, as used in this preamble, includes all holding companies within the same family of companies.

As of March 31, 2000, OTS estimates that approximately 16.6 percent or 88 of the 531 OTS regulated holding company structures were small under the asset-based definition (*i.e.*, these holding company structures hold assets of less than $100 million.) About 150 of the thrift holding company structures (28.2 percent) are small businesses using the revenue-based definition.

As noted above, OTS has proposed an exemption that would substantially limit the rule's application to small businesses. Under the proposed rule, OTS would exempt a holding company from the notice requirement if it will have consolidated tangible capital of 10 percent or greater after the proposed transaction. OTS estimates that this proposed exemption would exempt 81.3

[18] OTS is also considering issuing a final rule for reviewing the capital adequacy of savings and loan holding companies and, when necessary, requiring additional capital. Since these requirements will be imposed on a case-by-case basis and since this rule would merely codify current practices, OTS does not anticipate that this aspect of the rule will have a significant impact on a substantial number of small entities.

[19] *See* 65 FR 30836 (May 15, 2000), to be codified at 13 CFR 121.201.

[20] OTS used financial data for 404 publicly traded thrift holding companies as a statistical sample for revenue, assets, and capital for all thrift holding companies.

[21] 65 FR at 30858 (NAICS Codes 551111 and 551112). Entities that fall within this category are primarily engaged in holding the securities (or other equity interests) of companies and enterprises for the purpose of owning a controlling interest or influencing the management decisions of these firms. These companies do not administer, oversee, and manage other establishments of the company or enterprise whose securities they hold. Entities that hold the securities of a depository institution and operate the entity are classified at NAICS Industry Group 5221, Depository Credit Intermediation. 65 FR at 30856. These businesses are subject to a $100 million in assets limitation.

[22] NAICS Subsector 523—Financial Investments and Related Activities and Subsector 524—Insurance Carriers and Related Activities. 65 FR at 30856. The size standard for direct property and casualty insurance carriers, however, is based on the number of employees.

[23] OTS has established these definitions of small savings and loan holding companies for the sole purpose of this Regulatory Flexibility Act Analysis, after consultation with the Small Business Administration's Office of Advocacy.

percent of small holding companies under the asset-based definition, and 70.5 percent of small holding companies using the revenue-based definition. Based on these percentages, OTS estimates that from 16 to 44 small holding company structures may be subject to the proposed rule.[24]

The following tables estimate the number of thrift holding companies at various asset and revenue levels and illustrates the impact of the proposed tangible capital exemption at various revenue and asset levels.[25] The proposed exemption more favorably affects smaller holding companies. Regardless of whether the asset size test or revenue test is used, a greater proportion of smaller holding companies are exempt than larger holding companies.

Asset size	Number	Percent of total	No. exempt	Percent exempt
Less than $100mm	88	16.6	72	81.3
$100mm–$250mm	142	26.8	90	63.3
$250mm–$500mm	114	21.4	45	39.8
$500mm–$2b	127	23.9	39	30.5
Greater than $2b	60	11.3	12	20.0
Total	531	100.0	258	48.6

1999 revenue	Number	Percent of total	No. exempt	Percent exempt
Under $5mm	150	28.2	106	70.5
$5mm–$10mm	138	25.9	63	45.6
$10mm–$50mm	158	29.7	60	38.1
$50mm–$100mm	47	8.8	9	20.0
Greater than $100mm	39	7.4	7	17.2
Total	531	100.0	244	48.6

OTS does not know how many non-thrift subsidiaries are held by small thrift holding companies, how frequently small thrift holding companies and their subsidiaries will engage in transactions subject to the proposed rule, or how often OTS will object to a proposed transaction because the activity will pose a material risk to the financial safety, soundness, or stability of a subsidiary savings association. Accordingly, OTS specifically seeks comments on these and any other issues.

B. Requirements of the Proposed Rule

As described more fully in the supplementary information section, the proposed rule would require savings and loan holding companies to notify OTS before they (or their subsidiaries, other than savings association subsidiaries) engage in certain types of activities. OTS may object to the proposed transaction if certain prerequisites are met.

The primary economic impact of this proposed rule is the additional expenses that holding companies may incur to prepare and submit notices. In addition to these expenses, when OTS objects to a proposed transaction or activity, there may be the additional expenses associated with seeking reconsideration of the OTS determination and with abandoning and not pursuing a proposed transaction.

To minimize the potential burdens of the proposed notice requirement, this proposed rule would:

- Exempt certain holding companies whose activities do not present a significant risk to a subsidiary thrift. Under the proposed rule, a notice is not required where the parent holding company would have a substantial capital cushion.
- Apply only to certain types of transactions that meet specific criteria established to identify those transactions that may pose a possible threat to the safety, soundness, or stability of the thrift.
- Minimize the filing burden by prescribing the content of the notice, permitting notices to include schedules of proposed transactions or activities for up to twelve months, and permitting consolidated filings with related applications.
- Minimize regulatory burden by providing an expeditious review period. Generally, the period is 30 days.
- Permit OTS to disapprove a transaction only under limited circumstances. Specifically, OTS may object only if it finds that the proposed transaction or activity would pose a material risk to the financial safety, soundness, or stability of the thrift.

OTS does not have a practicable or reliable basis for quantifying the costs of this proposed rule. While OTS does not believe that the rule would be burdensome, OTS cannot predict the economic impact on savings and loan holding companies (or their subsidiaries that are non-thrift subsidiaries) of the proposed rule. Rather than merely guess at the regulatory burden of the proposed rule, OTS solicits comment on potential burdens and on ways to minimize the burdens.

[24] The tangible capital exception would exempt a much smaller percentage of large holding companies from the notice requirement. For example, only 20 percent of the thrift holding companies holding over $2 billion in assets would be exempt under the proposed tangible capital criteria. Similarly, 17.2 percent of thrift holding companies with revenues of $100 million or more would be exempt under this exception.

There is a second exception for savings and loan holding companies whose subsidiary thrifts represent less than 20 percent of the consolidated assets. However, OTS estimates that this exemption should not significantly reduce the number of small holding companies that are subject to this rule. As noted above, OTS estimates that the primary asset of approximately 78.2 percent of all holding companies is the thrift itself.

[25] As noted above, OTS used a statistical sample of publicly traded thrift holding companies to obtain information for all thrift holding companies. The percentages of exempt holding companies listed in the tables are the actual percentages derived from this sample. The number of exempt holding companies was derived by multiplying these percentages by the 531 thrift holding company structures. The numbers in the ''Number Exempt'' column were rounded to the nearest whole number.

C. Significant Alternatives

Consistent with the purposes of this rulemaking, OTS has exercised its discretion to minimize the burden of this proposed rule on small entities. Although OTS could exempt small savings and loan holding companies from the notice requirement, OTS does not believe that this action is appropriate. The purpose of the notice is to ensure that holding companies and their subsidiaries do not engage in transactions that could pose a material risk to the financial safety, soundness, or stability of the subsidiary thrift. There is no rationale for exempting thrifts from this regulatory protection merely because they are affiliated with small holding companies.

OTS, however, has attempted to ensure that holding companies, including small holding companies, are not unduly burdened by the notice requirements. Specifically, the proposal recognizes that transactions involving a holding company with a substantial capital cushion are less likely to present a significant risk to the subsidiary thrift. By exempting savings and loan holding companies that will have consolidated tangible capital of ten percent or greater, OTS excludes 70.5 percent to 81.3 percent of small thrift holding companies from the coverage of this rule.

OTS considered reducing the tangible capital threshold to minimize the impact on small thrift holding companies. Using the asset-based definition of small holding company, OTS data indicates that reducing the tangible capital threshold to 9 percent would increase the percentage of exempted small companies from 81.3 percent to 86.4 percent. Reducing the tangible capital threshold to 8 percent would increase the percentage of exempted small holding companies to 87.9 percent.

Using the revenue-based definition of small holding company, OTS data indicates that reducing the tangible capital threshold to 9 percent would increase the percentage of exempt small companies from 70.5 percent to 80.4 percent. Reducing the threshold to 8 percent would further increase the percentage exempted to 88.4 percent. In this preamble, OTS specifically seeks comment whether a tangible capital threshold of less than 10 percent, however, would be sufficient to protect the subsidiary thrift.

In addition to this alternative, the supplementary material solicits comment on a number of alternatives that could reduce regulatory burden on holding companies, including small holding companies. These include, but are not limited to, the following questions:

- Should OTS consider a different threshold to describe situations where a thrift is not the primary line of business of the parent holding company?
- Should OTS exempt holding companies that control savings associations with limited operations (*e.g.*, a subsidiary thrift that conducts only fiduciary operations)?
- Should OTS redefine the types of transactions and activities that are subject to a notice?

OTS requests comment on whether these or other alternatives would reduce the burdens and whether any exceptions for small institutions would be appropriate. Also, OTS welcomes comment on the appropriateness of its approach, and on any other alternatives that would satisfy the objectives of this proposal.

D. Other Matters

The proposed rule does not appear to duplicate or overlap with any other rules or requirements. However, it is possible that a transaction within the scope of this proposed rule may be related to another transaction for which an application or notice is required under another regulation or statute. For example, a holding company may propose to incur additional debt in connection with its acquisition of a new branch office for its subsidiary savings association. Under these circumstances, the savings association would be required to file a related branch notice or application. To the extent that related notice or applications may exist, the proposed rule permits the holding company to combine the notice with any related notice or application.

OTS generally seeks comment on any Federal statutes or rules that may duplicate, overlap, or conflict with the proposal.

VII. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act and the OTS has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

VIII. Paperwork Reduction Act

OTS invites comment on:

(1) Whether the collection of information contained in this notice of proposed rulemaking are necessary for the proper performance of OTS's functions, including whether the information has practical utility;

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

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

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

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

Respondents are not required to respond to this collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the OMB in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. OTS will use any comments received to develop its new burden estimates. Comments on the collection of information should be sent to the Dissemination Branch (1550), Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552, with a copy to the office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503.

The collection of information requirements in this proposed rule is found in 12 CFR 584.110 through 584.130. OTS requires this information for the proper supervision of activities and transactions by savings and loan holding companies. The likely respondents are savings and loan holding companies.

Estimated number of respondents: 190.

Estimated average annual burden hours per respondent: 5.

Estimated total annual disclosure and recordkeeping burden: 950.

List of Subjects in 12 CFR Part 584

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby proposes to amend part 584, chapter V, title 12, Code of Federal Regulations as set forth below:

PART 584—REGULATED ACTIVITIES

1. The authority citation for part 584 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468.

2. A heading for a new subpart A is added preceding § 584.1 to read as follows:

Subpart A—Regulated Activities

3. A new subpart B is added to read as follows:

Subpart B—Notice of Significant Transactions or Activities

Sec.
584.100 What does this subpart do?
584.110 Must I file a notice?
584.120 What transactions or activities require a notice?
584.130 How do I file my notice?
584.140 On what grounds will OTS disapprove the proposed activity or transaction?
584.150 When may I engage in the proposed activity or transaction?

Subpart B—Notice of Significant Transactions or Activities

§ 584.100 What does this subpart do?

(a) This subpart requires certain savings and loan holding companies (''you'') to notify OTS before engaging in or committing to engage in significant transactions or activities.

(b)(1) As used in this subpart B:

(i) *Consolidated non-thrift liabilities* means your consolidated liabilities less the consolidated liabilities of your subsidiary savings association(s).

(ii) *Consolidated tangible assets* means your consolidated assets less your consolidated intangible assets and deferred policy acquisition costs.

(iii) *Consolidated tangible capital* means your consolidated capital less your consolidated intangible assets and deferred policy acquisition costs.

(iv) *Subsidiary savings association* means the subsidiary savings association itself and its consolidated subsidiaries.

(2) In applying the definitions in this paragraph (b), you must compute assets, intangible assets, liabilities, and capital consistent with generally accepted accounting principles.

§ 584.110 Must I file a notice?

(a) *General.* You must file a notice before you may engage in or commit to engage in transactions described under § 584.120, unless one or more of the following applies:

(1) Your subsidiary savings association(s) has consolidated assets that, when aggregated, represent less than 20 percent of your consolidated assets; or

(2) You will have consolidated tangible capital of 10 percent or greater following the transaction.

(b) *Required by Region.* You must file a notice before you engage in or commit to engage in a transaction or activity if your Regional Director informs you, in writing, that OTS has concerns relating to your financial condition, or the safety and soundness of your subsidiary savings association. The Regional Director will identify, in writing, the types of transactions and activities that will require you to file a notice. These transactions may include, but are not limited to, the transactions and activities described in § 584.120.

§ 584.120 What transactions or activities require a notice?

(a) Unless you are excepted under § 584.110(a), you must file a notice before you engage in or commit to engage in any transaction or activity described in the following chart. In determining the thresholds in the chart, you must combine the proposed transaction with all other transactions within the three relevant categories (acquisitions of assets, increases in liabilities, and decreases in capital) conducted during the prior twelve months.

You must file a notice if you or your subsidiary (other than a savings association) will . . .	And the proposed transaction will . . .
(1) Issue, renew, or guarantee debt . . .	Increase the amount of your consolidated non-thrift liabilities by five percent or more. You are not required to file a notice for debt, however, if your consolidated non-thrift liabilities will be less than 50 percent of your consolidated tangible capital after the proposed debt transaction.
(2) Acquire assets (other than cash, cash equivalents, and securities or other obligations unconditionally guaranteed by the United States Government) . . .	Exceed an amount equal to fifteen percent of your consolidated assets.
(3) Engage in any transaction . . .	Reduce the ratio of your consolidated tangible capital to consolidated tangible assets by ten percent or more. If your consolidated tangible capital is less than zero, you must file a notice unless your Regional Director informs you, in writing, that a notice is not required.

(b) *Other transactions or activities.* You must file a notice if your OTS Regional Director informs you, in writing, that a transaction or activity may pose a risk to the financial safety, soundness, or stability of the subsidiary savings association and will require a notice.

§ 584.130 How do I file my notice?

(a) *Regional Office.* You must file a written notice with the applicable OTS Regional Office at the address listed in § 516.1 of this chapter, at least 30 days before the earlier of engaging in or committing to engage in a transaction or activity.

(b) *Content.* You must include the following information in your written notice:

(1) The basis for the filing requirement.

(2) A description of the transaction or activity, its purpose, and an analysis of its impact on the savings association. You must identify the amount of the debt, capital reduction, or asset acquisition, indicate the intended use of the funds or reason for capital reduction or asset acquisition and an analysis of the impact on consolidated earnings and consolidated capital, and summarize the relevant terms of the transaction, including a description of any significant covenants or collateral requirements.

(c) *Schedules.* You may include a schedule proposing transactions or activities over a specified period, not to exceed 12 months.

(d) *Combining notice.* You may combine your notice with related notices or applications. If you submit a combined filing, you must:

(1) State that the related notice or application is intended to serve as a notice or application under this subpart; and

(2) Submit the notice or application in a timely manner.

§ 584.140 On what grounds will OTS disapprove or condition the proposed activity or transaction?

The OTS Regional Director will disapprove or condition your notice if the proposed transaction or activity will pose a material risk to the financial safety, soundness, or stability of your subsidiary savings association.

§ 584.150 When may I engage in the proposed activity or transaction?

(a) You or your subsidiary may engage in the proposed transaction or activity 30 days after OTS receives all required information, unless OTS informs you, in writing, of one of the following:

(1) OTS disapproves the notice.

(2) OTS extends the 30-day review period for an additional period not to exceed 30 days. You or your subsidiary may engage in the proposed transaction or activity when the extended period expires, unless OTS informs you, in writing, that it disapproves the notice.

(b) In addition, you or your subsidiary may engage in the proposed transaction or activity after OTS notifies you, in writing, that it does not intend to disapprove the notice.

(c) Notwithstanding paragraphs (a) and (b) of this section, you may not engage in a proposed transaction or activity if:

(1) Your notice included a schedule of proposed transactions or activities under § 584.130(c); and

(2) The OTS Regional Director determines that there has been a material change of circumstances, and informs you, in writing, that you must file a new notice under this subpart.

Dated: October 23, 2000.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 00–27705 Filed 10–26–00; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 187

[Docket No. FAA–00–7018; Admt. No. 187–11]

RIN 2120–AG17

Fees for FAA Services for Certain Flights; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Interim final rule; Extension of comment period.

SUMMARY: On June 6, 2000, the FAA published an Interim Final Rule (IFR) establishing fees for FAA air traffic and related services for certain aircraft that transit U.S.-controlled airspace but neither take off from, nor land in, the United States and invited comments for a 120-day period. The IFR went into effect on August 1, 2000, and the comment period was originally scheduled to close on October 4, 2000. However, on September 29, 2000, the FAA extended the comment period to October 27, 2000, to ensure that affected entities, mostly foreign, have sufficient time to comment on the contents of the docket. Due to recently passed legislation and the availability of other relevant accounting and economic information, the FAA is extending the comment period another 60 days, to December 26, 2000.

DATES: Comments must be received on or before December 26, 2000.

ADDRESSES: Address your comments to the Docket Management System (DMS), U.S. Department of Transportation, Room Plaza Level 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number ''FAA–00–7018'' at the beginning of your comments, and you should submit two copies of your comments.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing comments in this rulemaking in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Randall Fiertz, Office of Performance Management, (APF–2), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7140; fax (202) 493–4191.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from this rulemaking are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

The Administrator will consider all comments received on or before the closing date. Late-filed comments will be considered to the extent practicable. The Interim Final Rule, as well as the Final rule, may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments must include a pre-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–00–7018.'' The postcard will be date-stamped and mailed to the commenter.

Availability of Interim Final Rule

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the **Federal Register's** web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number of this rulemaking.

Extension of Comment Period

On June 6, 2000, the FAA published Amendment No. 187–11, Fees for FAA Services for Certain Flights (65 FR 36002). The FAA requested that comments to that document be submitted on or before October 4, 2000. On September 29, 2000 the FAA extended the comment period to October 27, 2000 (65 FR 59713). This was done in response to the significance and international implications of this IFR, as expressed in the comments, and because the first billing under the rule had recently occurred.

On October 18, 2000, the Congress passed legislation (S. 2412) that directly affects the issues in this case and which may cause those members of the public who have previously provided comments in this rulemaking to provide additional comments. This legislation has been sent to the President for signature.

Also, in response to the comments, the FAA has had prepared, and will soon make available in the docket, additional accounting and economic information relevant to the development of the Overflight fees.

The FAA has determined that an opportunity to comment on the recently passed legislation and the additional information is appropriate for development of the Final Rule as required by 49 U.S.C. 45301. Therefore, the FAA is extending the comment period an additional 60 days until December 26, 2000 to allow for an opportunity for the public to comment further on this rulemaking.

The FAA determines that extending the comment period is in the public interest and that good cause exists for taking this action. Accordingly, the comment period for Amendment No. 187–11 is extended until December 26, 2000.

Issued in Washington, DC, October 23, 2000.

Donna McLean,

Assistant Administrator for Financial Services.

[FR Doc. 00–27664 Filed 10–26–00; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT–25–7223b; A–1–FRL–6891–7]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Connecticut pursuant to the Clean Air Act. This revision establishes and requires implementation of an enhanced motor vehicle inspection and maintenance program. In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Written comments must be received on or before November 27, 2000.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning , Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA—New England, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA—New England, One Congress Street, 11th floor, Boston, MA and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Peter Hagerty, (617) 918–1049.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: October 19, 2000.

Mindy S. Lubber,

Regional Administrator, EPA—New England.

[FR Doc. 00–27656 Filed 10–26–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA037–01–7211b; A–1–FRL–6891–8]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; New Source Review Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the Commonwealth of Massachusetts. These revisions establish and require the implementation of the 1990 Clean Air Act Amendments (CAAA) requirements regarding New Source Review (NSR) in areas that have not attained the National Ambient Air Quality Standards (NAAQS). The intended effect of this action is to approve Massachusetts revisions to 310 CMR 7.00 Appendix A, ''Emission Offsets and Nonattainment Review.'' In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that

provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received on or before November 27, 2000.

ADDRESSES: Comments may be mailed to Steven Rapp, Unit Manager, Air Permits Program, Office of Ecosystem Protection (mail code CAP), U.S. Environmental Protection Agency, EPA—New England, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosytem Protection, U.S. Environmental Protection Agency, Region I, 1 Congress Street, Suite 1100, Boston, MA 02114–2023 and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Brendan McCahill, (617) 918–1652.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

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

Dated: October 19, 2000.

Mindy S. Lubber,

Regional Administrator, EPA New England.

[FR Doc. 00–27658 Filed 10–26–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6888–6]

Arizona: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Arizona has applied to EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Arizona. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by November 27, 2000.

ADDRESSES: Send written comments to Lisa McClain-Vanderpool, U.S. EPA Region 9, 75 Hawthorne St., (mailcode WST–3) San Francisco, CA 94105. If you have any questions, you may call Ms. McClain-Vanderpool at (415) 744–2086. You may examine copies of the materials submitted by Arizona during normal business hours at the following locations: EPA Region 9, Library, 75 Hawthorne Street, 13th Floor, San Francisco, CA 94105; phone number: (415) 744–1510; or at the Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012; phone number: (602) 207–4211 or (800) 234–5677.

FOR FURTHER INFORMATION CONTACT: Lisa McClain-Vanderpool at (415) 744–2086.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: September 27, 2000.

Felicia Marcus,

Regional Administrator, Region 9.

[FR Doc. 00–27143 Filed 10–26–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7502]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Georgia	Atlanta (City), DeKalb County.	Lullwater Creek	Approximately 150 feet upstream of downstream Lullwater Parkway crossing.	None	*894
			Approximately 1,100 feet upstream of upstream Lullwater Parkway crossing.	None	*911
		South Fork Peachtree Creek.	Approximately 2,145 feet downstream of Johnson Road.	*828	*830
			Approximately 1,755 feet upstream of Johnson Road.	*835	*836
Maps available for inspection at the City of Atlanta Site Development Office, 55 Trinity Avenue, S.W., Atlanta, Georgia. Send comments to The Honorable William Campbell, Mayor of the City of Atlanta, 55 Trinity Avenue, S.W., Atlanta, Georgia 30335.					
Georgia	Bloomingdale (City), Chatham County.	Tributary 2	At confluence with Pipemakers Canal	None	*19
			At a point just upstream of Southern Railway.	None	*23
Maps available for inspection at the Bloomingdale City Hall, 8 West Highway 80, Bloomingdale, Georgia. Send comments to The Honorable William Strozier, Mayor of the City of Bloomingdale, P.O. Box 216, Bloomingdale, Georgia 31302.					
Georgia	Chamblee (City), Decatur County.	North Fork Peachtree Creek Tributary B.	Approximately 575 feet upstream of Buford Highway.	None	*913
			Approximately 950 feet upstream of Buford Highway.	None	*915
Maps available for inspection at the Chamblee City Hall, 5468 Peachtree Road, Chamblee, Georgia. Send comments to The Honorable Mary Goldenburg, Mayor of the City of Chamblee, 5468 Peachtree Road, Chamblee, Georgia 30341.					
Georgia	Clarkston (City), DeKalb County.	South Fork Peachtree Creek.	Approximately 225 feet of Interstate Route 285.	*940	*941
			Approximately 50 feet upstream of the upstream corporate limits.	*959	*962
Maps available for inspection at the Clarkston City Hall, 3921 Church Street, Clarkston, Georgia. Send comments to The Honorable George Baldesare, Mayor of the City of Clarkston, 3921 Church Street, Clarkston, Georgia 30021.					
Georgia	Decatur (City), DeKalb County.	Peavine Creek	Approximately 70 feet downstream of Peavine Creek Tributary.	*935	*933
			Approximately 30 feet downstream of Peavine Creek Tributary.	*935	*934
Maps available for inspection at the City of Decatur Engineering Department, 2635 Talley Street, Decatur, Georgia. Send comments to The Honorable Bill Floyd, Mayor of the City of Decatur, P.O. Box 220, Decatur, Georgia 30031.					
Georgia	DeKalb County (Unincorporated Areas).	North Fork Peachtree Creek Tributary D–2.	Approximately 150 feet downstream of Briarcliff Road.	None	*875
			Approximately 500 feet upstream of Aspen Drive.	None	*966

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		North Fork Peachtree Creek Tributary B.	At confluence with North Fork Peachtree Creek.	*859	*861
			Approximately 575 feet upstream of Buford Highway.	None	*913
		North Fork Peachtree Creek Tributary C.	At confluence with North Fork Peachtree Creek.	*910	*914
			Approximately 2,480 feet upstream of Lynnray Drive.	None	*982
		South Fork Peachtree Creek Tributary C.	At confluence with South Fork Peachtree Creek.	*902	*905
			Approximately 300 feet upstream of North Arcadia Avenue.	None	*966
		South Fork Peachtree Creek Tributary B.	At confluence with South Fork Peachtree Creek.	*991	*988
			Approximately 800 feet upstream of Pine Valley Road.	None	*1,071
		North Fork Peachtree Creek Tributary D–1.	At confluence with North Fork Peachtree Creek.	None	*864
			Approximately 900 feet upstream of Greenoaks Circle.	None	*988
		North Fork Peachtree Creek Tributary A.	At confluence with North Fork Peachtree Creek.	*851	*849
			Upstream side of Eighth Street	*928	*926
		North Fork Peachtree Creek.	At downstream county boundary	*821	*820
			Approximately 0.7 mile upstream of Pleasantdale Road.	*927	*924
		South Fork Peachtree Creek.	At county boundary	*826	*828
			Approximately 3,300 feet upstream of Elmdale Drive.	None	*1,063
		North Fork Peachtree Creek Tributary D–3.	At confluence with North Fork Peachtree Creek Tributary D–1.	None	*918
			Approximately 0.1 mile upstream of Greenbrook Way.	None	*968
		Peavine Creek	At confluence with South Fork Peachtree Creek.	*837	*840
			At Scott Boulevard	None	*952
		Peachtree Branch	At confluence with North Fork Peachtree Creek.	*885	*887
			Approximately 1.5 mile upstream of Interstate Route 285.	None	*966
			At confluence with South Fork Peachtree Creek.	*976	*978
		South Fork Peachtree Creek Tributary A.	Approximately 2,250 feet upstream of Woburn Drive.	None	*1,040
		Perimeter Creek	At confluence with Nancy Creek	*867	*870
			Approximately 90 feet downstream of Arlington Drive.	None	*1,058
		Nancy Creek	At county boundary	*855	*853
			Approximately 25 feet downstream of Laurelway Road.	*984	*983
		Lullwater Creek	At confluence with Peavine Creek	*864	*869
			Approximately 150 feet upstream of downstream Lullwater Parkway.	*890	*894
		Henderson Mill Creek	At confluence with Peachtree Creek	*888	*890
			Approximately 0.77 mile upstream of Interstate Route 285.	None	*1,006
		North Fork Nancy Creek ..	At confluence with Nancy Creek	*874	*876
			Approximately 525 feet upstream of confluence with Nancy Creek.	*875	*876
		Panthers Branch	A point approximately 815 feet upstream of Rock Springs Road.	*787	*786
			A point approximately 1,200 feet upstream of Thompson Mill Road.	*809	*808
		Fowler Branch	At confluence with Cobbs Creek	*801	*804
			Approximately 0.4 mile upstream of confluence with Cobbs Creek.	*803	*804
		Nancy Creek Tributary A ..	At confluence with Nancy Creek	*929	*931
		Nancy Creek Tributary B ..	Downstream side of Peachford Road	*930	*931

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 1,225 feet upstream of confluence with Nancy Creek.	*928	*929
		Honey Creek	Approximately 1,175 feet downstream of Honey Creek Tributary A.	None	*767
			Approximately 775 feet downstream of Honey Creek Tributary A.	None	*768
		North Fork Peachtree Creek Tributary No. 2.	Approximately 1,600 feet downstream of English Oak Drive.	None	*943
			Approximately 375 feet downstream of English Oak Drive.	None	*953
		South Fork Peachtree Creek Tributary.	Approximately 225 feet downstream of North Decatur Road.	None	*902
			Approximately 50 feet upstream of Landover Drive.	None	*908
Maps available for inspection at the DeKalb County Roads and Drainage Department, 4305 Memorial Drive, Decatur, Georgia.					
Send comments to Ms. Liane Levetan, Chief Executive Officer, 1300 Commerce Drive, Decatur, Georgia 30030.					
Georgia	Doraville (City), DeKalb County.	Nancy Creek	At Tilly Mill Road	*957	*953
			Approximately 1,450 feet upstream of Tilly Mill Road.	*961	*958
Maps available for inspection at the Doraville City Hall, 3725 Park Avenue, Doraville, Georgia.					
Send comments to The Honorable Gene Lively, Mayor of the City of Doraville, 3725 Park Avenue, Doraville, Georgia 30340.					
Illinois	Phoenix (Village), Cook County.	Little Calumet River	At intersection of 9th Avenue and 153rd Street.	None	*597
			Approximately 200 feet southeast of intersection of 153rd Street and 7th Avenue.	None	*597
Maps available for inspection at the Phoenix Village Hall, 15240 Vincenes Road, Phoenix, Illinois.					
Send comments to The Honorable Terry Wells, Mayor of the Village of Phoenix, 650 East Phoenix Center Drive, Phoenix, Illinois 60426.					
Illinois	Robbins (Village), Cook County.	Midlothian Creek	Approximately 1,350 feet downstream of 137th Street.	*597	*596
			Approximately 0.61 mile upstream of Kedzie Avenue.	*607	*604
Maps available for inspection at the Robbins Village Hall, 3327 West 137th Street, Robbins, Illinois.					
Send comments to The Honorable Irene H. Brodie, Mayor of the Village of Robbins, 3327 West 137th Street, Robbins, Illinois 60472.					
Maine	Benton (Town), Kennebec County.	Sebasticook River	At downstream corporate limits	*59	*61
			Approximately 1,450 feet downstream from corporate limits.	*107	*108
Maps available for inspection at the Benton Town Office, 1279 Clinton Avenue, Benton, Maine.					
Send comments to Mr. Rick Lawrence, Chairman of the Benton Board of Selectmen, 1279 Clinton Avenue, Benton, Maine 04901.					
Maine	Waterville (City), Kennebec County.	Kennebec River	At downstream corporate limits	*55	*56
			Approximately 1,990 feet upstream of confluence of Holland Brook.	*91	*92
		Messalonskee Stream	At confluence with Kennebec River.	*57	*58
			At Automatic Project Dam	*83	*79
Maps available for inspection at the Waterville City Hall, 1 Common Street, Waterville, Maine.					
Send comments to The Honorable Nelson Madore, Mayor of the City of Waterville, Waterville City Hall, 1 Common Street, Waterville, Maine 04901.					
Maine	Winslow (Town), Kennebec County.	Kennebec River	At downstream corporate limits	*54	*56
			At approximately 200 feet above upstream corporate limits.	*92	*92
		Sebasticook River	At confluence with Kennebec River	*59	*61
			At upstream corporate limits	*59	*61

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Town of Winslow Assessor's Office, 16 Benton Avenue, Winslow, Maine.					
Send comments to Mr. Edward A. Gagnon, Winslow Town manager, 16 Benton Avenue, Winslow, Maine 04902.					
New Hampshire	Durham (Town), Strafford County.	Petee Brook	At confluence with Beard's Creek	None	*8
			A point approximately 20 feet upstream of Durham Reservoir Spillway.	None	*84
		College Brook	Approximately 40 feet upstream of the confluence with Oyster River.	*14	*15
			At Concord Road	None	*69
		Oyster River	Approximately 1,500 feet upstream of Mill Pond Dam.	*14	*15
			A point approximately 15 feet upstream of State Route 155A.	None	*68
		Lamprey River	Approximately 40 feet upstream of Wiswall Road.	None	*63
			At upstream corporate limits	None	*64
		Harnel Brook	At the confluence with Oyster River	*14	*15
			Approximately 1,600 feet upstream of the confluence with Oyster River.	*14	*15
Maps available for inspection at the Durham Town Hall, 15 New Market Road, Durham, New Hampshire.					
Send comments to Mr. Duane Hyde, Town of Durham Director of Planning and Community Development, 15 New Market Road, Durham, New Hampshire 03824.					
New Jersey	Harding (Township), Morris County.	Passaic River	At downstream corporate limits	None	*230
			Approximately 1.15 miles upstream of Mount Kemble Avenue (U.S. Route 202).	*304	*303
Maps available for inspection at the Township of Harding Municipal Building, Township Clerk's Office, Blue Mill Road, New Vernon, New Jersey.					
Send comments to The Honorable Donald Dinsmore, Mayor of the Township of Harding, P.O. Box 666, New Vernon, New Jersey 07976.					
New York	Champlain (Town), Clinton County.	Great Chazy River	Confluence with Lake Champlain	None	*102
			Approximately 275 feet downstream from I–87 bridge.	None	*130
Maps available for inspection at the Champlain Town Hall, 729 Route 9, Champlain, New York.					
Send comments to Mr. Arnold A. Beal, Town of Champlain Supervisor, P.O. Box 3144, Champlain, New York 12919.					
New York	Champlain (Village), Clinton County.	Great Chazy River	Approximately 3,580 feet downstream of Elm Street Bridge.	None	*103
			Approximately 3,300 feet upstream of U.S. Route 9 bridge.	None	*127
Maps available for inspection at the Champlain Village Hall, 1104 Route 9 Main Street, Champlain, New York.					
Send comments to The Honorable Melissa McManus, Mayor of the Village of Champlain, 1104 Route 9 Main Street, Champlain, New York 12919–1158.					
New York	Litchfield (Town), Herkimer County.	Steele Creek	Approximately 440 feet downstream of the most downstream crossing of State Route 51.	None	*703
			Approximately 150 feet upstream of Jordanville Road.	None	*1,213
Maps available for inspection at the Litchfield Town Clerk's Office, 1250 Albany Road, Claysville, New York.					
Send comments to Mr. Wayne Casler, Litchfield Town Supervisor, 508 Albany Road, West Winfield, New York 13491.					
New York	North Elba (Town), Essex County.	West Branch Ausable River.	Approximately 50 feet downstream of State Route 86.	None	*644
			Approximately 170 feet upstream of State Route 73.	None	*1,680
		Chubb River, Reach 1	At the confluence with West Branch Ausable River.	None	*1,664
			Approximately 0.76 mile upstream of confluence with West Branch Ausable River.	None	*1,668

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Chubb River, Reach 2	Approximately 20 feet downstream of CONRAIL.	None	*1,727
			Approximately 0.46 mile upstream of Old Military Road.	None	*1,738
Maps available for inspection at the North Elba Town Clerk's Office, 301 Main Street, Lake Placid, New York.					
Send comments to Ms. Shirley Seney, North Elba Town Supervisor, P.O. Box 385, Lake Placid, New York 12946.					
Ohio	Brooklyn Heights (Village), Cuyahoga County.	Cuyahoga River	At downstream corporate limit	*596	*597
			At upstream corporate limit	*597	*602
Maps available for inspection at the Western Reserve Engineering Company, 5605 Valley Belt Road, Independence, Ohio.					
Send comments to The Honorable Robert Tonne, Mayor of the Village of Brooklyn Heights, 345 Tuxedo Avenue, Brooklyn Heights, Ohio 44131.					
Ohio	Cuyahoga Heights (Village), Cuyahoga County.	Cuyahoga River	Approximately 800 feet downstream side of Harvard Denison Bridge.	*590	*588
			Approximately 1,700 feet upstream side of Interstate 77.	*602	*606
Maps available for inspection at the Cuyahoga Heights Village Hall, 4863 East 71st Street, Cuyahoga Heights, Ohio.					
Send comments to The Honorable Louis Jo Bacci, Mayor of the Village of Cuyahoga Heights, 4863 East 71st Street, Cuyahoga Heights, Ohio 44125.					
Ohio	Fort Recovery (Mercer County).	Buck Creek	Approximately 925 feet downstream of West Butler Street.	None	*918
			At upstream most crossing of Sharpsburg Road.	None	*949
Maps available for inspection at the Fort Recovery Village Offices, 201 South Main Street, Fort Recovery, Ohio.					
Send comments to The Honorable John M. Wolf, Mayor of the Village of Fort Recovery, P.O. Box 340, Fort Recovery, Ohio 45846.					
Ohio	Independence (City), Cuyahoga County.	Cuyahoga River	At downstream corporate limits.	*598	*602
			At Pleasant Valley Road	None	*620
Maps available for inspection at the City of Independence Building Department, 6335 Selig Drive, Independence, Ohio.					
Send comments to The Honorable Fred Ramos, Mayor of the City of Independence, 6800 Brecksville Road, Independence, Ohio 44131.					
Ohio	Mercer County (Unincorporated Areas).	Buck Creek	Approximately 300 feet downstream of Sharpsburg Road.	None	*937
			Approximately 375 feet upstream of Sharpsburg Road.	None	*952
Maps available for inspection at the Mercer County Engineer's Office, 321 Riley Street, Celina, Ohio.					
Send comments to Mr. Jerry Laffin, Chairman of the Mercer County Board of Commissioners, 220 West Livingston Street, Celina, Ohio 45822.					
Pennsylvania	Avondale (Borough), Chester County.	East Branch White Clay Creek.	Approximately 330 feet downstream of State Route 41.	*272	*271
			Approximately 1,060 feet upstream of 3rd Avenue.	*279	*280
Maps available for inspection at the Avondale Borough Hall, 110 Palmroy Avenue, Avondale, Pennsylvania.					
Send comments to Mr. Lou Kirkaldie, Chairman of the Borough of Avondale Planning Commission, P.O. Box 247, Avondale, Pennsylvania 19311.					
Pennsylvania	Caln (Township) Chester County.	East Branch Brandywine Creek.	Approximately 500 feet downstream of State Route 282 (at Norwood Road).	*243	*244
			Approximately 1,100 feet upstream of U.S. Route 30 and 282.	*253	*254
Maps available for inspection at the Caln Municipal Building, Department of Engineering and Code Enforcement, 253 Municipal Drive, Thorndale, Pennsylvania.					
Send comments to Ms. Illaria Steele, President of the Township of Caln Board of Commissioners, 253 Municipal Drive, Thorndale, Pennsylvania 19372.					
Pennsylvania	Coatesville (City), Chester County.	West Branch Brandywine Creek.	Approximately 2,800 feet downstream of Business Route 30.	*308	*307

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Just downstream of Kings Highway	*363	*362
Maps available for inspection at the Coatesville City Hall, Codes Department, 1 City Hall Place, Coatesville, Pennsylvania.					
Send comments to Mr. Paul Janssen, Coatesville City Manager, 1 City Hall Place, Coatesville, Pennsylvania 19320.					
Pennsylvania	Downingtown (Borough), Chester County.	East Branch Brandywine Creek.	Approximately 3,000 feet upstream of U.S. Route 322.	*229	*232
			Approximately 700 feet upstream of U.S. Route 30 over State Route 282.	*252	*253
Maps available for inspection at the Downingtown Borough Hall, 4 West Lancaster Avenue, Downingtown, Pennsylvania.					
Send comments to Mr. Anthony Gambale, Downingtown Borough Manager, 4 West Lancaster Avenue, Downingtown, Pennsylvania 19335.					
Pennsylvania	East Bradford (Township), Chester County.	East Branch Brandywine Creek.	Approximately 450 feet downstream of Route 842.	*186	*187
			Approximately 1,250 feet downstream of U.S. Route 322 (second crossing).	*225	*224
		West Branch Brandywine Creek.	Approximately 200 feet upstream of confluence with Brandywine Creek.	*186	*187
			Approximately 4,200 feet upstream of State Road 842 (Wawaset Road).	*194	*195
Maps available for inspection at the East Bradford Township Hall, 666 Copeland Road, West Chester, Pennsylvania.					
Send comments to Mr. John Jordan, Chairman of the East Bradford Board of Supervisors, 666 Copeland Road, West Chester, Pennsylvania 19380.					
Pennsylvania	East Brandywine (Township), Chester County.	East Branch Brandywine Creek.	Approximately 1,100 feet upstream of U.S. Route 30 over Route 282.	*253	*254
			Approximately 3,500 feet upstream of Lyndell Road.	*343	*338
Maps available for inspection at the East Brandywine Township Office, 1214 Horseshoe Pike, Downingtown, Pennsylvania.					
Send comments to Mr. Hudson Boltz, Chairman of the Township of East Brandywine Board of Supervisors, 1214 Horseshoe Pike, Downingtown, Pennsylvania, 19335.					
Pennsylvania	East Caln (Township) Chester County.	East Branch Brandywine Creek.	Approximately 1,125 feet downstream of U.S. Route 322 (second crossing).	*225	*224
			Approximately 2,350 feet downstream of Dowlin Forge Road.	*261	*260
Maps available for inspection at the East Caln Township Hall, 110 Bell Tavern Road, Downingtown, Pennsylvania.					
Send comments to Mr. Edwin Hill, East Caln Township Manager, P.O. Box 232, Downingtown, Pennsylvania, 19335.					
Pennsylvania	East Fallowfield (Township), Chester County.	West Branch Brandywine Creek.	Approximately 500 feet downstream of State Route 3062 (Strasburg Road).	*251	*252
			Approximately 500 feet downstream of Luria Bro's Railroad bridge.	*271	*272
Maps available for inspection at the East Fallowfield Township Hall, 2264 Strasburg Road, East Fallowfield, Pennsylvania.					
Send comments to Mr. Earl Emel, Chairman of the Township of East Fallowfield Board of Supervisors, 2264 Strasburg Road, East Fallowfield, Pennsylvania, 19320.					
Pennsylvania	Honey Brook (Township), Chester County.	East Branch Brandywine Creek.	Just upstream of South Creek or Chestnut Tree Road.	None	*558
			Approximately 2,920 feet upstream of Suplee Road.	None	*597
Maps available for inspection at the Honey Brook Township Building, 495 Suplee Road, Honey Brook, Pennsylvania.					
Send coments to Ms. Michal A. Jany, Honey Brook Township Chairperson, P.O. Box 1281, Honey Brook, Pennsylvania, 19344.					
Pennsylvania	London Grove (Township), Chester County.	East Branch White Clay Creek.	Approximately 1,080 feet upstream of Third Avenue.	None	*279
			Approximately 1,440 feet upstream of Third Avenue.	None	*280

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the London Grove Township Hall, 372 Rosehill Road, Suite 100, West Grove, Pennsylvania.					
Send comments to Ms. Constance Alegranti, Chairperson of the Township of London Grove Board of Supervisors, 372 Rosehill Road, Suite 100, West Grove, Pennsylvania, 19939.					
Pennsylvania	Modena (Borough), Chester County.	West Branch Brandywine Creek.	Approximately 500 feet downstream of Luria Railroad Bridge (CONRAIL).	*271	*272
			Approximately 4,200 feet downstream of First Avenue.	*284	*283
Maps available for inspection at the Modena Borough Hall, North Brandywine Avenue, Modena, Pennsylvania.					
Send comments to Mr. Edward Gross, Borough of Modena Council President, P.O. Box 116, Modena, Pennsylvania 19358.					
Pennsylvania	New Garden (Township), Chester County.	East Branch White Clay Creek.	Approximately 1,080 feet upstream of Third Avenue.	None	*279
			Approximately 1,440 feet upstream of Third Avenue.	None	*280
Maps available for inspection at the New Garden Township Building, 8934 Gap Newport Pike, Landenburg, Pennsylvania.					
Send comments to Mr. Willard H. Smedley, Chairman of the Township of New Garden Board of Supervisors, 8934 Gap Newport Pike, Landenburg, Pennsylvania 19350.					
Pennsylvania	Newlin (Township), Chester County.	West Branch Brandywine Creek.	Approximately 800 feet upstream of State Route 3027 (Northbrook Road).	*203	*202
			Approximately 500 feet downstream of State Route 3062 (Strasburg Road).	*251	*252
Maps available for inspection at Yerkey's Associates, 1444 Phoenixville Pike, West Chester, Pennsylvania.					
Send comments to Mr. Robert Pearson, Chairman of the Township of Newlin Board of Supervisors, P.O. Box 133, Unionville, Pennsylvania 19375.					
Pennsylvania	Pocopson (Township), Chester County.	West Branch Brandywine Creek.	Approximately 200 feet upstream of confluence with Brandywine Creek.	*186	*187
			Approximately 2,500 feet upstream of State Route 3027 (Northbrook Road).	*204	*203
Maps available for inspection at the Pocopson Township Hall, 740 Denton Hollow Road, West Chester, Pennsylvania.					
Send comments to Mr. Bruce Yelton, Chairman of the Township of Pocopson Board of Supervisors, P.O. Box 1, Pocopson, Pennsylvania 19366.					
Pennsylvania	South Coatesville (Borough), Chester County.	West Branch Brandywine Creek.	Approximately 4,725 feet downstream of First Avenue.	*284	*283
			Approximately 3,750 feet upstream of First Avenue.	*307	*305
Maps available for inspection at the South Coatesville Borough Hall, 136 Modena Road, South Coatesville, Pennsylvania.					
Send comments to The Honorable James Kennedy, Mayor of the Borough of South Coatesville, 136 Modena Road, South Coatesville, Pennsylvania 19320.					
Pennsylvania	Upper Uwchlan (Township), Chester County.	East Branch Brandywine Creek.	Approximately 600 feet downstream of Dorlan Hill Road.	*283	*281
			Approximately 3,500 feet upstream of Lyndell Road.	*343	*338
Maps available for inspection at the Upper Uwchlan Township Building, 140 Pottstown Pike, Chester Springs, Pennsylvania.					
Send comments to Mr. Al Gaspari, Township of Upper Uwchlan Codes Administrator, 140 Pittstown Pike, Chester Springs, Pennsylvania 19425.					
Pennsylvania	Uwchlan (Township), Chester County.	East Branch Brandywine Creek.	Approximately 2,350 feet downstream of Dowlin Forge Road.	*261	*260
			Approximately 600 feet downstream of Dorlan Hill Road.	*283	*281
Maps available for inspection at the Uwchlan Township Hall, 715 North Ship Road, Exton, Pennsylvania.					
Send comments to Mr. C. Ward Braceland, Chairman of the Township of Uwchlan Board of Supervisors, 715 North Ship Road, Exton, Pennsylvania 19341.					
Pennsylvania	Valley (Township), Chester County.	West Branch Brandywine Creek.	Approximately 3,300 feet downstream Business Route 30 (Lincoln Highway).	*307	*305

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 1,050 feet upstream from Valley Station Drive.	*344	*341
Maps available for inspection at the Valley Township Building, 890 West Lincoln Highway, Coatesville, Pennsylvania.					
Send comments to Mr. Grover Koon, Chairman of the Township of Valley Board of Supervisors, P.O. Box 467, Coatesville, Pennsylvania 19320.					
Pennsylvania	Wallace (Township), Chester County.	East Branch Brandywine Creek.	Approximately 3,500 feet upstream of Lyndell Road.	None	*338
			Approximately 6,000 feet downstream of North Manor Road.	None	*481
Maps available for inspection at the Wallace Township Building, 451 Fairview Road, Glen Moore, Pennsylvania.					
Send comments to Ms. Jane Shields, Chairman of the Township of Wallace Board of Supervisors, P.O. Box 670, Glen Moore, Pennsylvania 19343.					
Pennsylvania	West Bradford (Township), Chester County.	West Branch Brandywine Creek.	Approximately 4,200 feet upstream of State Road 842.	*194	*195
			Approximately 800 feet upstream of State Route 3027 (Northbrook Road).	*203	*202
		East Branch Brandywine Creek.	Approximately 5,100 feet downstream of U.S. Route 322 (First one).	*206	*205
			Approximately 3,000 feet upstream of U.S. Route 322 (Second one).	*229	*232
Maps available for inspection at the West Bradford Township Hall, 1385 Campus Drive, Downingtown, Pennsylvania.					
Send comments to Mr. Jack Hines, West Bradford Township Manager, 1385 Campus Drive, Downingtown, Pennsylvania 19335.					
Pennsylvania	West Brandywine (Township), Chester County.	West Branch Brandywine Creek.	Approximately 150 feet upstream of Kings Highway (State Route 340).	*364	*365
			Approximately 600 feet upstream of Kings Highway.	*366	*367
Maps available for inspection at the West Brandywine Township Hall, 199 LaFayette Road, Coatesville, Pennsylvania.					
Send comments to Mr. Joe Obenier, Chairman of the Township of West Brandywine Board of Supervisors, 199 LaFayette Road, Coatesville, Pennsylvania 19320.					
Pennsylvania	West Caln (Township), Chester County.	West Branch Brandywine Creek.	Approximately 150 feet upstream of Kings Highway (State Route 340).	*264	*365
			Approximately 600 feet upstream of Kings Highway.	*366	*367
Maps available for inspection at the West Caln Township Hall, 721 Kings Highway, Wagontown, Pennsylvania.					
Send comments to Mr. Paul Pfitzenmeyer, Chairman of the Township of West Caln Board of Supervisors, P.O. Box 175, Wagontown, Pennsylvania 19376.					
Pennsylvania	West Nantmeal (Township), Chester County.	East Branch Brandywine Creek.	Approximately 6,000 feet downstream of North Manor Road.	None	*481
			Just downstream of South Creek or Chestnut Road.	None	*458
Maps available for inspection at the West Nantmeal Township Hall, 455 North Manor Road, Elverson, Pennsylvania.					
Send comments to Mr. Gary Elston, Chairman of the Township of West Nantmeal Board of Supervisors, P.O. Box 234, Elverson, Pennsylvania 19520.					
Vermont	Plymouth (Town), Windsor County.	Black River	Approximately 650 feet downstream of Tyson-Reading Road.	*1,065	*1,067
			At Black Pond Dam	*1,334	*1,337
Maps available for inspection at the Town of Plymouth Clerk's Vault, Plymouth Union, Plymouth, Vermont.					
Send comments to Mr. Ralph Michael, Chairman of the Town of Plymouth Board of Selectmen, 16 Bridge Street, Ludlow, Vermont 05149.					
Virginia	Hillsboro (Town), Loundon County.	North Fork Catoctin Creek	At the upstream side of State Route 718	None	*504
			Approximately 300 feet upstream of State Route 719.	None	*533

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Hillsboro Town Hall, 36991 Charlestown Pike, Hillsboro, Virginia.					
Send comments to The Honorable Kenneth Rousseau, Mayor of the Town of Hillsboro, P.O. Box 32098, Hillsboro, Virginia 20134.					
Virginia	Loudoun County (Unincorporated Areas).	Broad Run	At the confluence with the Potomac River	None	*210
			Approximately 800 feet downstream of the confluence of South Fork Broad Run.	*267	*268
		Beaverdam Run	At the confluence with Broad Run	*216	*219
			Approximately 0.5 mile upstream of State Route 625.	None	*300
		Cabin Branch No. 1	At confluence with Broad Run	*263	*266
			Approximately 1,260 feet upstream of confluence with Broad Run.	*264	*266
		Cabin Branch No. 2	At confluence with Broad Run	*219	*221
			Approximately 1,550 feet upstream of Blossom Drive.	None	*258
		Horsepen Run	At the confluence with Broad Run	None	*234
			Approximately 1,575 feet upstream of Dulles Toll Road.	None	*280
		Indian Creek	From confluence with Horsepen Run	None	*260
			Approximately 2.2 miles upstream of the confluence with Horsepen Run.	*285	*282
		Lenah Run	At confluence with North Fork Broad Run	None	*280
			Approximately 75 feet upstream of U.S. Route 50.	None	*323
		North Fork Broad Run	Approximately 200 feet downstream of confluence with South Fork Broad Run.	*269	*268
			Approximately 0.57 mile upstream of confluence of Tributary to North Fork Broad Run.	None	*306
		Russell Branch	At the confluence with Beaverdam Run	*216	*219
			Approximately 1.2 miles upstream of the confluence with Beaverdam Run.	None	*225
		South Fork Broad Run	Approximately 1,175 feet upstream from the confluence with Broad Run.	*269	*268
			Approximately 0.88 mile upstream of State Route 616.	None	*335
		Stallion Branch	At the confluence with Horsepen Run	None	*260
			Approximately 2.2 miles upstream of the confluence with Horsepen Run.	*271	*270
		Tributary B to Beaverdam Run.	At the confluence with Tributary D to Beaverdam Run.	None	*251
			Approximately 0.71 mile upstream of Claiborne Parkway.	None	*316
		Tributary D to Beaverdam Run.	At the confluence with Beaverdam Run	None	*251
			Approximately 1,900 feet upstream of State Route 642 (Hay Road).	None	*262
		Tributary No. 1 to Broad Run.	At confluence with Broad Run	None	*244
			Approximately 400 feet upstream of the confluence with Broad Run.	None	*244
		Tributary No. 2 to Broad Run.	At the confluence with Broad Run	*252	*251
			Approximately 0.57 mile upstream of the confluence with Broad Run.	None	*265
		Tributary No. 3 to Broad Run.	At the confluence with Broad Run	*262	*264
			Approximately 0.57 mile upstream of the confluence with Broad Run.	None	*266
		Tributary No. 1 to Beaverdam Run.	At the confluence with Beaverdam Run	None	*228
			Approximately 0.47 mile upstream of confluence of Beaverdam Run.	None	*234
		Tributary to Horsepen Run	At confluence with Horsepen Run	None	*273
			Approximately 0.71 mile upstream of the confluence with Horsepen Run.	None	*321

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Tributary to North Fork Broad Run.	At confluence with North Fork Broad Run	None	*297
			Approximately 1,770 feet upstream of confluence with North Fork Broad Run.	None	*304
		Tributary to Stallion Branch.	At the confluence with Stallion Branch	None	*260
			Approximately 0.44 mile upstream of the confluence with Stallion Branch.	None	*260
Maps available for inspection at the Loudoun County Building, Building & Development Department, 1 Harrison Street, S.E., Leesburg, Virginia					
Send comments to Mr. Kirby Bowers, Loudoun County Administrator, 1 Harrison Street, S.E., 5th Floor, P.O. Box 7000, Leesburg, Virginia 20177–7000.					
Virginia	Pittsylvania County (Unincorporated Areas).	Dan River	At State boundary	*395	*396
			Approximately 3.0 miles downstream of Southern Railway.	*457	*458
Maps available for inspection at the Pittsylvania County Zoning Office, 53 North Main Street, Chatham, Virginia.					
Send comments to Mr. William D. Sleeper, Pittsylvania County Administrator, P.O. Box 426, Chatham, Virginia 24531.					
West Virginia	Capon Bridge (Town), Hampshire County.	Dillons Run	At the confluence with the Cacapon River	None	*814
			At a point approximately 2,600 feet upstream of the confluence with the Cacapon River.	None	*814
		Cacapon River	At a point approximately 2,450 feet downstream of U.S. Route 50.	None	*811
			At a point approximately 4,350 feet upstream of U.S. Route 50.	None	*817
Maps available for inspection at the Capon Bridge Town Building, Route 50 East, Capon Bridge, West Virginia.					
Send comments to The Honorable Frederick V. Berkeridge, Mayor of the Town of Capon Bridge, P.O. Box 183, Route 50 East, Capon Bridge, West Virginia 26711.					
West Virginia	Hampshire County (Unincorporated Areas).	Cacapon River	At a point approximately 1.6 miles downstream of U.S. Route 50.	None	*807
			At a point approximately 1.9 miles upstream of U.S. Route 50.	None	*820
		Big Run	At the confluence with the South Branch Potomac River.	None	*680
			At a point approximately 475 feet upstream of Grassy Lick Road.	None	*1,057
		Dillons Run	At a point approximately 2,600 feet upstream of the confluence with the Cacapon River.	None	*813
			At a point approximately 2,850 feet upstream of the confluence with the Cacapon River.	None	*813
		Green Spring Run	At the confluence with North Branch Potomac River.	None	*535
			At a point approximately 4.2 miles upstream of Green Spring Valley Road.	None	*649
		Little Cacapon River	At a point approximately 1.1 miles downstream of Little Cacapon Road.	None	*977
			At upstream side of Little Cacapon Road	None	*1,011
		North Fork Little Cacapon River.	At confluence with Little Cacapon River ..	None	*1,011
			At a point approximately 1.1 miles upstream of Heide Cooper Road.	None	*1,141
		South Fork Little Cacapon River.	At confluence with Little Cacapon River ..	None	*1,011
			At a point approximately 1.9 miles upstream of U.S. Route 50.	None	*1,129
		Mill Branch	At confluence with Cacapon River	None	*818
			At a point approximately 2.5 miles upstream of U.S. Route 50.	None	*949

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		North River	At a point approximately 7.2 miles downstream of U.S. Route 50.	None	*822
			At a point approximately 3.3 miles upstream of U.S. Route 50.	None	*906
		South Branch Potomac River.	Upstream side of the Baltimore & Ohio Railroad bridge.	None	*559
			Approximately 2.84 miles upstream of confluence of Big Run.	None	*686
Maps available for inspection at the Hampshire County Courthouse, Main Street, Romney, West Virginia 26757.					
Send comments to Mr. John D. Sitar, President of the Hampshire County Board of Commissioners, P.O. Box 806, Romney, West Virginia 26757.					
West Virginia	Romney (Town), Hampshire County.	Big Run	At a point approximately 225 feet downstream of State Route 28.	None	*738
			At a point approximately 0.8 mile upstream of State Route 28.	None	*838
Maps available for inspection at the Romney Town Building, 260 School Street, Romney, West Virginia.					
Send comments to The Honorable Hoy Shingleton, Mayor of the Town of Romey, 260 School Street, Romney, West Virginia 26757.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 16, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–27642 Filed 10–26–00; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG13

Endangered and Threatened Wildlife and Plants; Extension of Public Comment Period and Notice of Public Hearing on Proposed Critical Habitat for Wintering Piping Plovers

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed Rule; Extension of public comment period and notice of public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service, provide notice that the public comment period on the proposed rule to designate critical habitat for wintering piping plovers (*Charadrius melodius*) is hereby extended, and that we will hold an additional public hearing on the proposal. Comments previously submitted during the comment period need not be resubmitted as they will be incorporated into the public record and will be fully considered in the final determination on the proposal.

DATES: The original comment period is scheduled to close on October 30, 2000. The comment period is hereby extended until November 24, 2000. We will hold a public hearing on the proposal on November 14, 2000. An informal public meeting will precede the hearing, beginning at 5:30 PM. The public hearing will run from 7 to 9 PM. Comments from all interested parties must be received by the closing date. Any comments that are received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: The public hearing will be held in the Grand Ballroom at the Radisson Hotel, 500 Padre Boulevard, South Padre Island, Texas 78597. Written comments may be submitted to the Field Supervisor, Ecological Services Field Office, c/o TAMUCC, Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412; by facsimile at (361) 994–8262; or by email at winterplovercomments@fws.gov. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Allan Strand, Acting Field Supervisor, at the above address (telephone 361/994–9005).

SUPPLEMENTARY INFORMATION:

Background

The piping plover (*Charadrius melodius*) is a small North American shorebird that breeds in the Great Plains, Great Lakes, and Atlantic Coast states, and winters along the Atlantic and Gulf coasts. The piping plover on its wintering areas is listed as a threatened species under the Endangered Species Act of 1973, as amended.

The U.S. Fish and Wildlife Service proposed critical habitat for wintering the piping plovers on July 6, 2000 (65 FR 41781). The proposal includes 146 areas along the coasts of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas. This includes approximately 2,734 kilometers (1,699 miles) of shoreline along the Gulf and Atlantic coasts and along margins of interior bays, inlets, and lagoons.

Section 4(b)(2) of the Endangered Species Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species. Consequently, we have prepared and made available a draft economic analysis concerning the proposed critical habitat designation, which is available for review and comment at the above Internet and mailing addresses.

Public Comments Solicited

We solicit comments on all aspects of the critical habitat proposal, including the draft economic analysis. Our final determination on the proposed critical habitat will take into consideration

comments and any additional information received by the date specified above. All previous comments and information submitted during the comment period need not be resubmitted. The comment period is extended to November 24, 2000. Written comments may be submitted to the Field Supervisor at the above address.

The Endangered Species Act requires that at least one public hearing be held on this proposed rule if requested. Given the interest this proposal has generated, we have already held 10 public hearings throughout the proposed critical habitat range. However, significant public interest in the proposal has led us to schedule another public hearing (see **DATES** and **ADDRESSES**).

Author

The primary author of this notice is Steve Spangle, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103.

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Geoffrey L. Haskett,

Regional Director, Region 2, Fish and Wildlife Service.

[FR Doc. 00–27628 Filed 10–26–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 001011283–0283–01; I.D. 082200C]

RIN 0648–AO30

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Harbor Porpoise Take Reduction Plan Regulations; Change to the List of Exempted Waters and Request for Comments

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

ACTION: Notice of proposed rulemaking.

SUMMARY: NMFS proposes to amend the Harbor Porpoise Take Reduction Plan (HPTRP) to include Delaware Bay, landward of the 72 COLREGS line (International Regulations for Preventing Collisions at Sea, 1972), in the list of exempted waters. Members of the Mid-Atlantic Harbor Porpoise Take Reduction Team (MATRT) recommended by consensus that NMFS redefine the list of exempted waters because harbor porpoise stranding and observer data did not justify subjecting fishers in Delaware Bay to the HPTRP gear restrictions. This proposed rule would exempt fishers operating in Delaware Bay from the HPTRP regulation. NMFS also requests comments on a recommendation from the MATRT to change the definition of small mesh gillnet.

DATES: Comments must be received at the appropriate address (see **ADDRESSES**) by November 27, 2000.

ADDRESSES: Comments on this proposed rule should be sent to Chief, Marine Mammal Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Gregg LaMontagne, NMFS, Northeast Region, 978–281–9291; Diane Borggaard, NMFS, Southeast Region, 727–570–5312; or Emily Hanson, NMFS Office of Protected Resources, 301–713–2322, ext. 101.

SUPPLEMENTARY INFORMATION: On December 2, 1998, NMFS published a final rule (63 FR 66464) implementing the HPTRP. Among other measures, the final rule identified those waters that are exempt from the HPTRP (50 CFR 229.34).

Section 118(f)(9) of the Marine Mammal Protection Act (MMPA) allows NMFS to issue regulations to implement a take reduction plan or amendments to a take reduction plan that, among other things, restricts fishing by time or area. In addition, NMFS' regulations implementing the HPTRP allow the Assistant Administrator for Fisheries, NOAA to revise the requirements of the plan through notification published in the **Federal Register** if NMFS determines that the boundary of a closed area is not appropriate.

The MATRT met on January 13 and 14, 2000, in Alexandria, Virginia. The MATRT recommended by consensus that the line defining the exempted waters of Delaware Bay be moved seaward from the published position of 39° 16.70'N 75° 14.6'W TO 39° 11.25'N 75° 23.90'W (southern point of Nantuxent Cove, NJ to the southern end of Kelly Island, Port Mahon, DE) and be redefined as a line from Cape May Canal to the Lewes Ferry Terminal. The MATRT concluded that there was no compelling reason for the existing position of the line in Delaware Bay, compared to other large bays in the Mid-Atlantic region (e.g., Chesapeake Bay and Long Island Sound), which typically establish the exempted waters as landward of the mouth of an inlet or the 72 COLREGS line. The MATRT believed that the existing line imposed unnecessary requirements on the Delaware Bay fishing community because harbor porpoise stranding data and observer data did not justify imposing HPTRP gear restrictions on the fishers in Delaware Bay.

This proposed rule would redefine exempted waters for Delaware Bay to include all marine and tidal waters landward of the 72 COLREGS demarcation line, as depicted or noted on nautical charts published by NOAA (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80. Using the COLREGS line is a slight deviation from the MATRT's consensus recommendation. The 72 COLREGS line was selected instead of the line recommended by the MATRT because the 72 COLREGS line is a well known and widely published line of demarcation. The actual difference between the COLREGS line and the MATRT recommended line is a seaward shift of approximately 1 nautical mile.

NMFS used observer data and harbor porpoise stranding data for Delaware and New Jersey to analyze the MATRT's consensus recommendation. Sea sampling observer data from inside the Delaware Bay for 1995 (23 observed hauls) and 1999 (12 observed hauls) were analyzed. During these 35 observed hauls no harbor porpoise interactions occurred. There has been 1 documented take of a harbor porpoise in a shad gillnet as explained in the Environmental Assessment prepared on November 24, 1998. Additional information was provided by a letter dated March 3, 2000, from the New Jersey Division of Fish and Wildlife, which stated that during 11 years of netting and tagging shad and striped bass in Delaware Bay there were no harbor porpoise interactions or sightings.

Stranding data from 1992–1999 revealed a total of 21 stranded harbor porpoise, with 17 stranded on the Delaware side of Delaware Bay and four stranded on the New Jersey side of Delaware Bay. The four New Jersey strandings exhibited no evidence of fishery interactions, although the animals were either emaciated or the cause of death could not be determined. Six of the 17 Delaware strandings displayed evidence of fishery interactions. The majority of the strandings occurred in the Lewes and Broadkill Beach areas near the mouth of Delaware Bay, suggesting that the strandings may have occurred as a result of interaction with dogfish and monkfish fishing activities outside of Delaware Bay, with the animals

stranding inside the Bay after drifting with prevailing ocean currents or tides.

Based on the analysis of observer and stranding data, no increase in harbor porpoise mortality is expected to occur as a result of moving the line delineating exempted waters seaward, and, therefore, NMFS concurs with the MATRT recommendation to include Delaware Bay in the exempted waters of the Mid-Atlantic component of the HPTRP.

NMFS also requests comments on the consensus recommendation of the MATRT to change the definition of small mesh gillnet. As defined in 50 CFR 229.2, small mesh gillnet is defined to mean a gillnet constructed with a mesh size of greater than 5 inches (12.7 cm) to less than 7 inches (17.78cm). The MATRT recommended changing the definition of small mesh gillnet to mean a gillnet with a mesh size greater than 5.5 inches (13.97 cm) to less than 7 inches (17.78 cm) to provide regulatory relief to fishers utilizing the 5.0–5.5 mesh size gillnets throughout the range of the Massachusetts (MA) portion of the HPTRP. The MATRT felt the bycatch data demonstrated very low harbor porpoise take rates for this mesh size range. However, 1999–2000 sea sampling observer data from the Massachusetts reports 4 takes in 4.9–5.0 inch mesh size gillnet (reported by vessel captain) with shad as the primary species sought. Given this information NMFS is particularly interested in comments regarding the impact of different mesh sizes on harbor porpoise and other marine mammals, the impact of different mesh size regulations on other species, including non-target fish, and the economic impact to the fishery.

Classification

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

NMFS prepared an Environmental Assessment (EA) on the final rule (63 FR 231, Dec. 2, 1998) to implement the HPTRP. This proposed action amends the HPTRP and NMFS prepared an Environmental Assessment for this proposed action and found that amending the HPTRP as described in this proposed action will not significantly affect the quality of the human environment.

The Chief Counsel for Regulation for the Department of Commerce certified to the Chief Counsel for Advocacy for the Small Business Administration that this proposed rule would not have a significant economic impact on a substantial number of small entities as follows:

The proposed rule would modify the Harbor Porpoise Take Reduction Plan (HPTRP) to redefine exempted waters for Delaware Bay to be all marine and tidal waters landward of the 72 COLREGS demarcation line.

This proposed action would relieve restrictions on fishers operating in Delaware Bay. At their most recent meeting, the Mid-Atlantic Harbor Porpoise Take Reduction Team (MATRT) concluded that harbor porpoise stranding and observer data did not justify imposing HPTRP gear restrictions on fishers operating in Delaware Bay. The MATRT recommended by consensus that the line defining the exempted waters of Delaware Bay be moved seaward. Based on NMFS' analysis of stranding and observer data, no increase in harbor porpoise mortality is expected to occur as a result of moving the line, and therefore we propose to implement the MATRT's consensus recommendation.

The economic impacts of the proposed change is expected to be positive because it is lifting regulations on fishers operating in Delaware Bay. State fisheries management personnel report that many of the gillnet fisheries operating in Delaware Bay that would benefit from the proposed change are conducted on vessels less than 50 feet in length. These fisheries are typically seasonal, operate from local wharfs, and are not participants in federally managed fisheries. All of the gillnet vessels analyzed in the Final Regulatory Flexibility Analysis (RFA) prepared on November 24, 1998, for the HPTRP qualified as small entities based on a threshold of $3 million in gross annual sales. The RFA estimated that 176 vessels would be impacted by the regulations, either through area closures or gear modifications.

New Jersey estimates that 28 fishermen qualified for the 2000 fishing year limited entry directed shad fishery inside Delaware Bay, and some of these fishers may be using small gillnet that is currently regulated by the HPTRP. In 1998, Delaware issued 115 commercial gillnet permits in 1998 and it is reasonable to expect that some of these permit holders operate inside Delaware Bay for some portion of the year and use gear subject to the HPTRP. This proposed action would reduce the regulatory burden on those fishers operating in Delaware Bay and using gillnet regulated by the HPTRP.

This proposed rule is not likely to adversely affect endangered or threatened species.

This proposed rule does not change the determination that the HPTRP will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management programs of the Atlantic states.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

This proposed rule is promulgated in compliance with all procedural requirements established by the Administrative Procedure Act.

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: October 22, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 229 is proposed to be amended as follows:

PART 229–AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C.1361 *et seq.*

2. In § 229.34, paragraph (a)(2) is revised to read as follows:

§ 229.34 Harbor Porpoise Take Reduction Plan-Mid-Atlantic.

(a)***

(2) *Exempted waters.* All waters landward of the first bridge over any embayment, harbor, or inlet will be exempted. The regulations in this section do not apply to waters landward of the following lines:

New York

40° 45.70' N 72° 45.15' W TO 40° 45.72' N 72° 45.30' W (Moriches Bay Inlet)

40° 37.32' N 73° 18.40' W TO 40° 38.00' N 73° 18.56' W (Fire Island Inlet)

40° 34.40' N 73° 34.55' W TO 40° 35.08' N 73° 35.22' W (Jones Inlet)

New Jersey/Delaware

39° 45.90' N 74° 05.90' W TO 39° 45.15' N 74° 06.20' W (Barnegat Inlet)

39° 30.70' N 74° 16.70' W TO 39° 26.30' N 74° 19.75' W (Beach Haven to Brigantine Inlet)

38° 56.20' N 74° 51.70' W TO 38° 56.20' N 74° 51.90' W (Cape May Inlet)

All marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80. (Delaware Bay)

Maryland/Virginia

38° 19.48' N 75° 05.10' W TO 38° 19.35' N 75° 05.25' W (Ocean City Inlet)

37° 52.' N 75° 24.30' W TO 37° 11.90' N 75° 48.30' W (Chincoteague to Ship Shoal Inlet)

37° 11.10' N 75° 49.30' W TO 37° 10.65' N 75° 49.60' W (Little Inlet)

37° 07.00' N 75° 53.75' W TO 37° 05.30' N 75° 56.' W (Smith Island Inlet)

North Carolina

All marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80.

* * * * *

[FR Doc. 00–27696 Filed 10–26–00; 8:45 am]

BILLING CODE: 3510–22 –S

Notices

Federal Register

Vol. 65, No. 209

Friday, October 27, 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

Food Safety and Inspection Service

[Docket No. 00–044N]

Codex Alimentarius: Meetings of the Codex Committee on Food Import and Export Inspection and Certification Systems

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meetings, request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), the Food and Drug Administration (FDA), and the U.S. Department of Health and Human Services (HHS), are sponsoring two public meetings, on November 7 and November 21, 2000, to provide information and receive public comments on agenda items that will be discussed at the Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS), which will be held in Perth, Australia, on December 11–15, 2000. The Under Secretary and FDA recognize the importance of of CCFICS and to address items on the Agenda. providing interested parties the opportunity to obtain background information on the Seventh Session

DATES: The public meetings are scheduled for Friday, November 7, 2000 from 1:00 p.m. to 4:00 p.m., and Tuesday, November 21, 2000 from 1:00 p.m. to 4:00 p.m.

ADDRESSES: The public meetings will be held in Conference Room 1409, Federal Office Building 8, Food and Drug Administration, 200 C Street, SW., Washington, DC. Submit one original and two copies of written comments to the FSIS Docket Room, Docket # 00–044N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. To receive copies of the documents referenced in this notice, contact the FSIS Docket Room at the above address. The documents will also be accessible via the World Wide Web at the following address: *http://www.fao.org/waicent/faoinfo/ECONOMIC/esn/codex/ccfics9/fc00_01e.htm*.

All comments received in response to this notice will be considered part of the public record and will be available for viewing in the Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Associate U.S. Manager for Codex, U.S. Codex Office, FSIS, Room 4861, South Building, 1400 Independence Avenue SW., Washington, DC 20250–3700, telephone (202) 205–7760; Fax: (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Mr. Patrick J. Clerkin at the above phone number.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled.

CCFICS was established to develop principles and guidelines for: Food import and export inspection and certification systems, the application of measures by competent authorities of importing and exporting countries to provide assurance that foods comply with essential requirements, the utilization of quality assurance systems, and the format and content of official certificates.

Issues To Be Discussed at the Public Meeting

The following issues and referenced documents will be discussed during the public meetings:

- Matters Referred from Other Codex Committees, DOCUMENT CX/FICS 00/2
- Draft Guidelines for Generic Official Certificate Formats and the Production and Issuance of Certificates, Comments at Step 6, DOCUMENT CX/FICS 00/3, DOCUMENT CX/FICS 00/3–Add.1
- Proposed Draft Guidelines for Food Import Control Systems, Comments at Step 3, DOCUMENT CX/FICS 00/4, DOCUMENT CX/FICS 00/4–Add.1
- Proposed Draft Guidelines for the Utilization and Promotion of Quality Assurance Systems to Meet Requirements in Relation to Food, Comments at Step 3, DOCUMENT CX/FICS 00/5, DOCUMENT CX/FICS 00/5–Add.1
- Proposed Draft Guidelines on the Judgement of Equivalence of Sanitary Measures Associated with Food Inspection and Certification Systems, Comments at Step 3, DOCUMENT CX/FICS 00/6, DOCUMENT CX/FICS 00/6–Add.1
- Proposed Draft Guidelines on the Judgement of Equivalence of Technical Regulations Associated with Food Inspection and Certification Systems, Comments at Step 3, DOCUMENT CX/FICS 00/7, DOCUMENT CX/FICS 00/7–Add.1
- Discussion Paper on Risk Management Guidelines for Food Control Emergency Situations Involving International Trade, DOCUMENT CX/FICS 00/8
- Discussion Paper on Food Export Control Systems, DOCUMENT CX/FICS 00/9

In advance of the meetings, the U.S. Delegate to CCFICS will have assigned responsibility for development of U.S. positions on these issues to members of the U.S. government. The individuals assigned responsibility will be named at the meetings and will take comments and develop draft U.S. positions. All interested parties are invited to provide information and comments on the above issues, or on any other issues that may be brought before CCFICS.

Public Meetings

At the November 3rd public meeting, the issues will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. At the November 21 public meeting, draft United States positions on the issues will be described and discussed, and attendees will have the opportunity to pose questions and offer comments.

Please state that your comments relate to CCFICS activities and specify which issues your comments address.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could effect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, farm, and consumer interest groups, allied health professionals and scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the FSIS Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on: October 23, 2000.

F. Edward Scarbrough,

U.S. Manager for Codex.

[FR Doc. 00–27617 Filed 10–26–00; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Olympic Provincial Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Olympic PIEC Advisory Committee will meet on November 17, 2000. The meeting will be held at the Olympic National Forest Headquarters office at 1835 Black Lake Blvd., Olympia, Washington. The meeting will begin at 9:00 AM and end at approximately 3:30 PM.

Agenda topics are: (1) Welcome and introduction of new committee members and brief Forest update; (2) Sol Duc Adaptive Management Area Process; (3) Road Management Strategy Update; (4) Northwest Forest Plan Monitoring Report; (5) Olympic Province Advisory Committee work plan and goals; (6) Open forum; and (7) Public comments.

All Olympic Province Advisory Committee Meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Ken Eldredge, Province Liaison, USDA, Olympic National Forest Headquarters, 1835 Black Lake Blvd., Olympia, WA 98512–5623, (360) 956–2323 or Dale Hom, Forest Supervisor, at (360) 956–2301.

Dated: October 17, 2000.

Kenneth C. Eldredge,

Acting Forest Supervisor, Olympic National Forest.

[FR Doc. 00–27518 Filed 10–26–00; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATES: November 27, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 11, September 1 and September 8, 2000 the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 FR 49218, 53267 and 54480) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Kitchen, Utensils

M.R. 870
M.R. 874
M.R. 875
M.R. 892
M.R. 893
M.R. 894
M.R. 895
M.R. 897
M.R. 898

Services

Microfilming, GPO Program B510–S, Washington, DC

Ventilation Duct Cleaning Services, Puget Sound Naval Shipyard, Building 435 Cafeteria, Bremerton, Washington

This action does not affect current contracts awarded prior to the effective

date of this addition or options that may be exercised under those contracts.

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–27681 Filed 10–26–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposal(s) to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 27, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits–Wagner–O'Day Act (41 U.S.C. 46—48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

ADA Compliance Investigator, Department of Transportation, Maritime Administration Headquarters, 400 7th Street, SW, Washington, DC
NPA: Federal Dispute Resolution Center, Alexandria, Virginia

Administrative Services, General Services Administration, Public Building Service Property Development Division, 230 S. Dearborn Street, Chicago, Illinois
NPA: The Chicago Lighthouse for People who are Blind or Visually Impaired, Chicago, Illinois

Administrative Services, U.S. Department of Commerce, National Weather Service NOAA, National Reconditioning Center, Kansas City, Missouri
NPA: Alphapointe Association for the Blind, Kansas City, Missouri

General Records Management Support, Corpus Christi Army Depot, Corpus Christi, Texas
NPA: South Texas Lighthouse for the Blind, Corpus Christi, Texas

Medical Transcription, Bureau of Prisons, Federal Medical Center, Lexington, Kentucky
NPA: The Lighthouse of Houston, Houston, Texas

Temporary Administrative General Support Services, National Institutes of Health, Bethesda, Maryland
NPA: Columbia Lighthouse for the Blind, Washington, DC

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits–Wagner–O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Arming Wire Assembly

1325–01–155–9965
1325–01–264–5465
1325–00–947–6698

Arming Wire

1350–00–889–8165

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–27682 Filed 10–26–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Proposed Additions Procurement List; Correction

In the document appearing on page 51794, FR Doc 00–21810, in the issue of August 25, 2000, in the second column the Committee published a proposed addition for Vegetable Oil. From comments that were received, the Committee realized that the requirement that was being proposed for addition to the Procurement List was open to several interpretations. The Committee then published a document appearing on page 60903, FR Doc 00–26361, in the issue of October 13, 2000, in the second column another proposed addition for Vegetable Oil. This notice of October 13, 2000 should have indicated that it was replacing the proposed addition of August 25, 2000. To clarify, the Committee is proposing to add an additional 5% of the government requirement for Vegetable Oil. If added, this will increase the requirement on the Procurement List from 15% to 20%.

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–27683 Filed 10–26–00; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, November 3, 2000, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of October 13, 2000 Meeting
III. Announcements
IV. Staff Director's Report
V. Report on Budget
VI. Police Practices Report
VII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: David Aronson, Press and Communications (202) 376–8312.

Edward A. Hailes, Jr.,

Acting General Counsel.

[FR Doc. 00–27742 Filed 10–25–00; 11:48 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

[I.D. 102300E]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southeast Region Federal Fisheries Permit Family of Forms

Form Number(s): None.

OMB Approval Number: 0648-0205.

Type of Request: Regular submission.

Burden Hours: 1,583.

Number of Respondents: 6,970.

Average Hours Per Response: 5 minutes for a dealer permit application; 20 minutes for a vessel permit application; 45 minutes for a aquacultured live rock site evaluation form; 5 minutes for tracking wreckfish individual transferable quotas; 5 minutes for an observer notification, for a notification of lost or stolen crab traps, for a notification of a golden crab transit, or for an aquacultured live rock notification of harvest activity; and 15 minutes for a notification of trap retrieval.

Needs and Uses: Participants in Federally-regulated fisheries in the Southeast U.S. are required to obtain Federal fishing permits. The information on the permit application is needed to determine eligibility, to provide data for the management of the fishery, and to aid enforcement of regulations. Permitted vessels are also required to provide notifications prior to certain specified activities.

Affected Public: Business and other for-profit organizations, and individuals.

Frequency: On occasion, biennial.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Forms Clearance Officer, (202) 482-3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 19, 2000.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer

[FR Doc. 00–27695 Filed 10–26–00; 8:45 am]

BILLING CODE: 3510–22 –S

DEPARTMENT OF COMMERCE

[I.D. 102300F]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: StormReady Application Form.

Form Number(s): None.

OMB Approval Number: 0648-0419.

Type of Request: Regular submission.

Burden Hours: 40.

Number of Respondents: 40.

Average Hours Per Response: 1.

Needs and Uses: StormReady is a community-recognition program for emergency management. The StormReady Application Form allows the National Weather Service to collect the information needed to recognize communities that are sufficiently prepared for adverse weather before an event happens.

Affected Public: State, Local, or Tribal Government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Forms Clearance Officer, (202) 482-3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 20, 2000.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–27697 Filed 10–26–00; 8:45 am]

BILLING CODE: 3510–22 –S

DEPARTMENT OF COMMERCE

[I.D. 102300D]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:*National Oceanic and Atmospheric Administration, (NOAA).

Title: Bluefin Tuna Statistical Document.

Form Number(s): None.

OMB Approval Number: 0648-0040.

Type of Request: Regular submission.

Burden Hours: 390.

Number of Respondents: 50.

Average Hours Per Response: 5 minutes for a documentation not needing validation, 20 minutes for a document needing validation.

Needs and Uses: U.S. tuna dealers who import or export bluefin tuna are required to complete and transmit to NOAA a Bluefin Tuna Statistical Document (BSD) as required by the International Commission for the Conservation of Atlantic Tunas. Foreign tuna dealers who export to the United States must ensure that a BSD validated by a government official accompanies the import.

Affected Public: Business and other for-profit organizations.

Frequency: On Occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395-3897Copies of the above information collection proposal can be

obtained by calling or writing Madeleine Clayton, Departmental Forms Clearance Officer, (202) 482-3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *MClayton@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 17, 2000.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–27701 Filed 10–26–00; 8:45 am]

BILLING CODE: 3510–22 –S

DEPARTMENT OF COMMERCE

Office of the Secretary

Performance Review Board; Membership

The following individuals are eligible to serve on the Performance Review Board in accordance with the Senior Executive Service Performance Appraisal System of the Office of the Secretary: Karen F. Hogan, Kathleen J. Taylor, K. David Holmes, Jr., John J. Phelan, III, Linda Moye-Cheatham, Roger Baker, Christopher W. Strobel, James L. Taylor, and Raul Perea-Henze.

Deborah Jefferson,

Executive Secretary, Office of the Secretary, Performance Review Board.

[FR Doc. 00–27673 Filed 10–26–00; 8:45 am]

BILLING CODE 3510–BS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–809]

Certain Cut-to-Length Carbon Steel Plate From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce (''the Department'') is rescinding the review it initiated on October 2, 2000, of the antidumping duty order on certain cut-to-length carbon steel plate from Mexico (65 FR 58733).

EFFECTIVE DATE: October 21, 2000.

FOR FURTHER INFORMATION CONTACT: Tom Killiam or Robert James, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5222 and 482–0649, respectively.

Applicable Statute and Regulations

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 Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2000).

Background

On August 31, 2000, the sole respondent, Altos de Hornos de Mexico, S.A. de C.V. (AHMSA), and the petitioners, Bethlehem Steel Corporation, and U.S. Steel Group (a unit of USX Corporation), requested that the Department conduct an administrative review of subject merchandise exported by AHMSA from Mexico to the United States for the period August 1, 1999 through July 31, 2000. On October 2, 2000, the Department published in the **Federal Register** a notice of initiation of administrative review with respect to AHMSA for that period (65 FR 58733). AHMSA withdrew its request for a review on September 27, 2000; the petitioners withdrew their request on September 28, 2000.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review if a party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Because both parties' withdrawals were submitted within the 90-day time limit, we are rescinding this review. We will issue appropriate appraisement instructions directly to the U.S. Customs Service.

This notice serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). 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 notice is in accordance with section 777(i)(1) of the Tariff Act, 19 CFR 351.213(d)(1) and 19 CFR 351.213(d)(4).

Dated: October 20, 2000.

Joseph Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 00–27689 Filed 10–26–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–832]

Continuation of Antidumping Duty Order: Pure Magnesium From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Continuation of Antidumping Duty Order: Pure Magnesium from the People's Republic of China.

SUMMARY: On August 3, 2000, 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 order on pure magnesium from the People's Republic of China (''China''), is likely to lead to continuation or recurrence of dumping.[1]

On September 12, 2000, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined 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.[2] Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on pure magnesium from China.

EFFECTIVE DATE: October 27, 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, D.C. 20230;

[1] See Pure Magnesium From the People's Republic of China; Final Results of Antidumping Duty Sunset Review, 65 FR 47713 (August 3, 2000).

[2] See Pure Magnesium from China, 65 FR 55047 (September 12, 2000) and USITC Publication 3346, Investigation No. 731–TA–696 (Review)(August 2000).

telephone: (202) 482–5050 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background:

On April 3, 1999, the Department initiated (65 FR 17484), and the Commission instituted (65 FR 17531), sunset reviews of the antidumping duty order on pure magnesium from China, pursuant to section 751(c) of the Act. As a result of its review, the Department found on August 3, 2000, that revocation of the antidumping duty order on pure magnesium from China would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the order revoked. See 65 FR 47713 (August 3, 2000).

On September 12, 2000, the Commission determined, pursuant to section 751(c) of the Act, 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. See Pure Magnesium from China, 65 FR 55047 (September 12, 2000) and USITC Publication 3346, Investigation No. 731–TA–696 (Review)(August 2000).

Scope

The product covered by this order is pure magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this order. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure primary magnesium is used as an input in producing magnesium alloy. Pure primary magnesium encompasses products (including, but not limited to, butt ends, stubs, crowns and crystals) with the following primary magnesium contents: (1) Products that contain at least 99.95 percent primary magnesium, by weight generally referred to as ''ultra-pure'' magnesium); (2) Products that contain less than 99.95 percent but not less than 99.8 percent primary magnesium, by weight (generally referred to as ''pure'' magnesium); and (3) Products (generally referred to as ''off-specification pure'' magnesium) that contain 50 percent or greater, but less than 99.8 percent primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium. ''Off-specification pure'' magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8 percent by weight. It generally does not contain, individually or in combination, 1.5 percent or more, by weight, of the following alloying elements: Aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of this order are alloy primary magnesium (that meets specifications for alloy magnesium), primary magnesium anodes, granular primary magnesium (including turnings, chips and powder), having a maximum physical dimension (*i.e.,* length or diameter) of one inch or less, secondary magnesium (which has pure primary magnesium content of less than 50 percent by weight), and remelted magnesium whose pure primary magnesium content is less than 50 percent by weight. Pure magnesium products covered by this order are currently classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19 and 9817.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Since the antidumping duty order was issued, the Department has clarified that the scope of the original order includes, but is not limited to, butt ends, stubs, crowns and crystals. See May 22, 1997, instructions to the Custom Service and November 14, 1997, Final Scope Rule of Antidumping Duty Order on Pure Magnesium from China.

Determination

As a result of the determination by the Department and the Commission that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on pure magnesium from China. The Department will instruct the 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 this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751 (c)(6) of the Act, the Department intends to initiate the next five-year review of this order not later than April 2005.

Dated: October 23, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–27687 Filed 10–26–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–845]

Stainless Steel Sheet and Strip in Coils From Japan: Final Results of Changed Circumstance Antidumping Duty Review, and Determination To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final results of changed circumstance antidumping duty review, and determination to revoke order in part.

EFFECTIVE DATE: October 27, 2000.

SUMMARY: On September 13, 2000, the Department of Commerce (the Department) published in the **Federal Register** a notice of initiation of a changed circumstances antidumping duty review and preliminary results of review with intent to revoke, in part, the antidumping duty order on stainless steel sheet and strip in coils from Japan (65 FR 55221). We are now revoking this order, in part, with regard to the following product: certain stainless steel lithographic sheet, as described in the ''Scope'' section of this notice. This partial revocation is based on the fact that domestic parties have expressed no further interest in the relief provided by the order with respect to the importation or sale of this certain stainless steel lithographic sheet, as so described.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or James C. Doyle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–6412 and (202) 482–0159, respectively.

SUPPLEMENTARY INFORMATION:

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's regulations are to the regulations at 19 CFR part 351 (April, 1999).

Background

On August 1, 2000, the Department received a request from General Development Corporation and its subsidiary Printing Developments, Inc. (PDI) for a changed circumstance review and an intent to revoke, in part, the antidumping duty (AD) order with respect to specific stainless steel lithographic sheet. The Department received a letter on August 15, 2000, from petitioners Allegheny Ludlum, AK Steel Corporation (formerly Armco, Inc.), J&L Specialty Steel, Inc., North American Stainless, the United Steelworkers of America, AFL-CIO/CLC, the Butler-Armco Independent Union, and the Zanesville Armco Independent Union, expressing no opposition to the request of General Development Corporation and its subsidiary PDI for revocation, in part, of the order pursuant to a changed circumstances review with respect to the subject merchandise defined in the Scope of the Review section below. Petitioners confirm that they have no objection to the retroactive application of the exclusion to the entries made from the date of the preliminary determination in the antidumping investigation, January 4, 1999, forward.

Pursuant to 19 CFR 351.222 (g)(1)(i) we preliminarily determined that petitioners' affirmative statement of no interest constituted changed circumstances sufficient to warrant a review and partial revocation of the order. Consequently, on September 13, 2000, the Department published an initiation of a changed circumstances review and preliminary results of review with an intent to revoke the order in part (65 FR 55221).

The merchandise under review is currently classifiable under subheading 7220.20.70 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

Scope of Changed Circumstance Review

The products covered by this exclusion request and changed circumstances review are certain stainless steel lithographic sheet. This sheet is made of 304-grade stainless steel and must satisfy each of the following fifteen specifications. The sheet must (1) Have an ultimate tensile strength of minimum 75 KSI; (2) a yield strength of minimum 30 KSI; (3) a minimum elongation of 40 percent; (4) a coil weight of 4000–6000 lbs.; (5) a width tolerance of -0/+0.0625 inch; and (6) a gauge tolerance of +/-0.001 inch. With regard to flatness, (7) the wave height and wave length dimensions must correspond to both edge wave and center buckle conditions; (8) the maximum wave height shall not exceed 0.75 percent of the wave length or 3 mm (0.118 inch), whichever is less; and (9) the wave length shall not be less than 100 mm (3.937 inch). With regard to the surface, (10) the surface roughness must be RMS (RA) 4–8; (11) the surface must be degreased and no oil will be applied during the slitting operation; (12) the surface finish shall be free from all visual cosmetic surface variations or stains in spot or streak form that affect the performance of the material; (13) no annealing border is acceptable; (14) the surface finish shall be free from all defects in raised or depression nature (*e.g.,* scratches, gouges, pimples, dimples, etc.) exceeding 15 microns in size and with regard to dimensions; and (15) the thickness will be .0145+/-.001 and the widths will be either 38″, 38.25″, or 43.5″ and the thickness for 39″ material will be .0118 +/-.001 inches.

Comments

In the preliminary results, we provided parties the opportunity to comment (65 FR 55221). We did not receive any comments from the interested parties.

Final Results of Review and Partial Revocation of the Antidumping Duty Order

The affirmative statement of no interest by petitioners concerning the stainless steel lithographic sheet and the fact that no interested parties objected to or otherwise commented on our preliminary results of review, constitute changed circumstances sufficient to warrant partial revocation of the order. Therefore, the Department is partially revoking the order on stainless steel sheet and strip in coils with respect to the product described above, in accordance with sections 751(b) and (d) and 782(h) of the Act and 19 CFR 351.222(g)(1)(i).

The Department will instruct the Customs Service (Customs) to proceed with liquidation, without regard to antidumping duties, of any unliquidated entries of stainless steel lithographic sheet, as specifically described in the ''Scope of Changed Circumstance Review'' section above, and entered, or withdrawn from the warehouse, for consumption on or after January 4, 1999. The Department will further instruct Customs to refund with interest any estimated duties collected with respect to unliquidated entries of stainless steel lithographic sheets entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this changed circumstances review, in accordance with section 778 of the Act and 19 CFR 351.222(g)(4).

This notice also serves as a final reminder to parties subject to administrative protection orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to timely notify the Department in writing of the return/destruction of APO material is a sanctionable violation.

This changed circumstances review, partial revocation of the antidumping duty order, and notice are in accordance with sections 751(b) and (d) and 782(h) of the Act and sections 351.216, 351.221(c)(3), and 351.222(g) of the Department's regulations.

Dated: October 19, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–27684 Filed 10–26–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–845]

Stainless Steel Sheet and Strip in Coils From Japan: Notice of Initiation and Preliminary Results of Changed Circumstance Antidumping Duty Review, and Intent To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstance antidumping duty review, and intent to revoke order in part.

EFFECTIVE DATE: October 27, 2000.

SUMMARY: On August 17, 2000, the Department of Commerce (''Department'') received a request on behalf of NIPPON Metalworking U.S.A, (''NIPPON'') for a changed circumstance antidumping duty (''AD'') review and to revoke in part the AD order with respect

to certain nickel-clad stainless steel sheet and strip in coils from Japan. The Department received a letter on September 6, 2000, from Allegheny Ludlum, AK Steel (formerly Armco, Inc.), J&L Specialty Steel, Inc., North American Stainless, Butler-Armco Independent Union, Zanesville-Armco Independent Union, and the United Steelworkers of America, AFL–CIO/CLC, (''petitioners'') indicating that they do not oppose NIPPON's request for revocation in part of the order pursuant to a changed circumstance review with respect to the subject merchandise defined in the Scope of the Review section below. Based on this expression of no interest we are initiating a changed circumstance review and preliminarily determine that the AD order should be revoked in part with respect to that product.

Interested parties are invited to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or James C. Doyle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–6412 and (202) 482–0159, respectively.

SUPPLEMENTARY INFORMATION:

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's regulations are to the regulations at 19 CFR part 351 (April 1999).

Background

On July 27, 1999, the Department published the Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils from Japan (64 FR 40565).

On August 17, 2000, NIPPON requested revocation in part of the antidumping order pursuant to section 751(b)(1) of the Act and section 351.216(b) of the Department's regulations with respect to specific stainless steel sheet and strip in coils from Japan, as described below. NIPPON further requested that revocation be effective for all unliquidated entries on or after the date of publication of the Department's January 4, 1999 preliminary less than fair value (''LTFV'') determination (64 FR 108). On September 6, 2000, petitioners indicated that they do not oppose this request for revocation in part, as noted above. Petitioners have no objection to the retroactive application of this exclusion from January 4, 1999, the date of the preliminary determination, forward.

Scope of the Review

The product covered by this exclusion request is nickel-clad stainless steel sheet and strip in coils from Japan. This nickel clad stainless steel sheet must satisfy each of the following specifications. The sheet must: (1) Have a maximum coil weight of 1000 pounds; (2) with a coil interior diameter of 458 mm and an outside diameter of 508; (3) with a thickness of .33 mm and a width of 699.4 mm; (4) fabricated in three layers with a middle layer of grade 316L or UNS 531603 sheet and strip sandwiched between the two layers of nickle cladding, using a roll bonding process to apply the nickel coating to each side of the stainless steel, each nickel coating being not less than 99 percent nickel and a minimum .038 mm in thickness. The resultant nickel-clad stainless steel sheet and strip also must meet the following additional chemical composition requirement (by weight): The first layer weight is 14%, specification Ni201 or N02201, Carbon 0.009, Sulfur 0.001, Nickel 99.97, Molybdenum 0.001, Iron 0.01, Copper 0.001 for a combined total of 99.992. The second layer weight is 72%, specification 316L or UNS 513603, Carbon .02, Silicon 0.87, Manganese 1.07, Phosphorus 0.033, Sulfur 0.001, Nickel 12.08, Chromium 17.81, Molybdenum 2.26, Iron 65.856 for a combined total of 100. The third layer is 14%, specification Ni201 or N02201, Carbon 0.01, Sulfur 0.001, Nickel 99.97, Molybdenum 0.001, Iron 0.01, Copper 0.001 for a combined total of 99.993. The weight average weight is 100%. The following is the weighted average: Carbon 0.01706, silicon 0.6264, Manganese 0.7704, Phosphorus 0.02376, Sulfur 0.001, Nickel 36.6892, Chromium 12.8232, Molybdenum 1.62748, Iron 47.41912, and Copper is 0.00028. The above-described material sold as grade 316L and manufactured in accordance with UNS specification 531603. This material is classified at subheading 7219.90.00.20 of the Harmonized Tariff Schedule of the United States.

Initiation and Preliminary Results of Changed Circumstance AD Review, and Intent To Revoke Order in Part

At the request of NIPPON, and in accordance with sections 751(b)(1) and 751(d)(1) of the Act and section 351.216 of the Department's regulations, the Department is initiating a changed circumstance review of stainless steel sheet and strip in coils from Japan to determine whether partial revocation of the antidumping order is warranted with respect to the stainless steel sheet and strip subject to this request. Section 782(h)(2) of the Act and section 351.222(g)(1)(i) of the Department's regulations provide that the Department may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have no further interest in the order, in whole or in part. In addition, in the event the Department determines that expedited action is warranted, section 351.221(c)(3)(ii) of the regulations permits the Department to combine the notices of initiation and preliminary results.

In accordance with section 751(b) of the Act, and sections 351.222(g)(l)(i) and 351.221(c)(3) of the Department's regulations, we are initiating this changed circumstance review and have determined that expedited action is warranted. Our decision to expedite this review stems from the domestic industry's lack of interest in applying the antidumping order to the specific stainless steel sheet and strip covered by this request. Additionally, in accordance with section 351.216(c) we find that the petitioners' affirmative statement of no interest constitutes good cause for the conduct of this review.

Based on the expression of no interest by petitioners and absent any objection by any other domestic interested parties, we have preliminarily determined that substantially all of the domestic producers of the like product have no interest in continued application of the AD order to the certain nickel clad stainless steel sheet and strip subject to this request. Therefore, we are notifying the public of our intent to revoke, in part, the AD order as it relates to imports of the merchandise described above from Japan.

Public Comment

Interested parties may submit case briefs and/or written comments no later than 14 days after the date of publication of these preliminary results. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 21 days after the date of publication. The Department will issue the final results of this changed circumstance review, which will include the results of its analysis raised in any such written comments, no later than 270 days after the date on which

this review was initiated, or within 45 days if all parties agree to our preliminary determination. *See* section 351.216(e) of the Department's regulations.

If final revocation occurs, we will instruct the U.S. Customs Service to end the suspension of liquidation for the merchandise covered by the revocation effective on or after January 4, 1999, the date of publication of the Department's preliminary LTFV determination (64 FR 108) and to release any cash deposit or bond. *See* section 351.222(g)(4) of the Department's regulations. The current requirement for a cash deposit of estimated antidumping duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstance review.

This initiation of review and notice are in accordance with sections 751(b) of the Act and 19 CFR 351.216, 351.221, and 351.222.

Dated: October 19, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–27685 Filed 10–26–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–810, A–570–859]

Notice of Postponement of Final Antidumping Duty Determinations: Steel Wire Rope From Malaysia and the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 27, 2000.

FOR FURTHER INFORMATION CONTACT: James Kemp or Tracy Levstik, AD/CVD Enforcement, Office 5, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–1276 and (202) 482–2815, respectively.

Postponement of Final Determinations

The Department of Commerce (the Department) is postponing the final determinations in the antidumping duty investigations of steel wire rope from Malaysia and the People's Republic of China (PRC).

On March 17, 2000, the Department initiated antidumping investigations of steel wire rope from India, Malaysia, the PRC, and Thailand.[1] *See Initiation of Antidumping Duty Investigations: Steel Wire Rope from India, Malaysia, the People's Republic of China, and Thailand,* 65 FR 16173 (March 27, 2000). On September 25, 2000, we issued the preliminary determinations of these investigations. *See Notice of Preliminary Determinations of Sales at Less Than Fair Value: Steel Wire Rope from India and the People's Republic of China; Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Steel Wire Rope from Malaysia,* 65 FR 58736 (October 2, 2000). The notice stated that the Department would issue its final determinations for the Malaysian and PRC cases no later than 75 days after the date of the preliminary determinations. The notice also stated that we extended the deadline for issuance of the final determination in the Indian case to no later than 135 days after the date of publication of the preliminary determination.

On September 27, 2000, the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (the petitioners) requested that the Department postpone the issuance of the final determination in the investigation of steel wire rope from Malaysia. On October 4, 2000, Fasten Group Import and Export Co., Ltd. (Fasten), a respondent in the PRC case, accounting for a significant proportion of exports of the merchandise subject to the investigation, requested that the Department postpone the issuance of the final determination in the investigation of steel wire rope from the PRC. Fasten also requested an extension to the imposition of provisional measures.[2] The petitioners' and Fasten's requests for postponement were timely, and the Department finds no compelling reason to deny them.

Therefore, in accordance with section 735(a)(2) of the Tariff Act of 1930, as amended, we are postponing the deadline for issuing these determinations until February 14, 2001, which is 135 days after the date of the publication of the preliminary determinations.

[1] The International Trade Commission issued a negative preliminary determination in the case involving Thailand, on April 20, 2000. Therefore, that case was terminated.

[2] It was unnecessary to extend the provisional measures for the Malaysian case because Kiswire received a *de minimis* margin at the preliminary determination, and, therefore, liquidation has not been suspended for subject merchandise from Malaysia.

Dated: October 23, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–27686 Filed 10–26–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–815]

Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Italy; Preliminary Results of Sunset Review of Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Full Sunset Review: Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Italy.

SUMMARY: On July 3, 2000, the Department of Commerce (''the Department'') initiated a sunset review of the countervailing duty order on seamless carbon and alloy steel standard, line and pressure pipe (''seamless pipe'') from Italy (65 FR 41053) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of substantive responses filed by domestic and respondent interested parties, the Department determined to conduct a full review. As a result of this review, the Department preliminarily finds that revocation of the countervailing duty order would likely lead to continuation or recurrence of subsidies at the levels indicated in the Preliminary Results of Review section of this notice.

EFFECTIVE DATE: October 27, 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 Avenue, NW., Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Countervailing and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998)

(*''Sunset Regulations''*) and in 19 CFR part 351 (2000) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Countervailing and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (*''Sunset Policy Bulletin''*).

Background

On July 3, 2000, the Department initiated a sunset review of the countervailing duty order on seamless pipe from Italy (65 FR 41053), pursuant to section 751(c) of the Tariff Act of 1930, as amended, (''the Act''). The Department received a notice of intent to participate on behalf of U.S. Steel Group, a unit of USX Corporation, and Vision Metals, Inc. (collectively, ''domestic interested parties''), within the applicable deadline (July 18, 2000) specified in section 351.218(d)(1)(i) of the *Sunset Regulations.* Domestic interested parties claimed interested-party status under section 771(9)(C) of the Act, as U.S. manufacturers of the domestic like product. Vision Metals, Inc., formerly the Gulf States Tube Division of Quanex Corporation, was a petitioner in the investigation and has been involved in this proceeding since its inception (*see* August 2, 2000, Substantive Response of domestic interested parties at 3).

On August 1, 2000, we received a response from the European Union Delegation of the European Commission (''EC'') expressing its willingness to participate in this review as the authority responsible for defending the interest of the Member States of the European Union (''EU'') (*see* August 1, 2000, Response of the EC at 2). On August 2, 2000, we received a response from the Government of Italy (''GOI'') expressing its willingness to participate in this review as the government of a country in which subject merchandise is produced and exported. The GOI and EC note that they have in the past participated in this proceeding (*see* August 1, 2000, Response of the EC at 2, and the August 2, 2000, Response of the GOI at 2).

On August 2, 2000, we received a complete substantive response from domestic interested parties, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i), and a complete substantive response from Dalmine S.p.A. (''Dalmine''), a foreign producer and exporter of the subject merchandise, and a respondent interested party under section 771(9)(A) of the Act.

We received rebuttal comments from domestic interested parties and Dalmine, on August 8, 2000, and August 7, 2000, respectively. Pursuant to 19 CFR 351.218(e)(2)(i), the Department determined to conduct a full (240-day) sunset review of this order.[1]

Scope of Review

See Appendix.

Analysis of Comments Received

All issues raised in the substantive responses and rebuttals by parties to this sunset review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memorandum'') from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated October 23, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memorandum include the likelihood of continuation or recurrence of countervailable subsidies and the net subsidy likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in 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 http://ia.ita.doc.gov/frn, under the heading ''Italy.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

Preliminary Results of Review

We preliminarily determine that revocation of the countervailing duty order on seamless pipe from Italy would be likely to lead to continuation or recurrence of countervailable subsidy at the rate listed below:

Producers/exporters	Net countervailable subsidy (percent)
All producers/exporters from Italy	1.47

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held on December 17, 2000, in accordance with 19 CFR 351.310(d).

Interested parties may submit case briefs no later than December 11, 2000, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than December 18, 2000. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such briefs, no later than February 28, 2001.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 23, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

Appendix

The scope of this order includes small diameter seamless carbon and alloy standard, line and pressure pipes (''seamless pipes'') produced to the American Society for Testing and Materials (''ASTM'') standards A–335, A–106, A–53, and American Petroleum Institute (''API'') standard API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this review also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification. For purposes of this review, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe, or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes. The seamless pipes subject to this review are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (''HTSUS'').

The following information further defines the scope of this review, which covers pipes meeting the physical parameters described above: Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas, and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM standard A–106 may be used in temperatures of up to 1000 degrees Fahrenheit, at various

[1] *See* August 22, 2000, Memorandum for Jeffrey A. May, Re: Seamless Pipe from Italy; Adequacy of Respondent Interested Party Response to the Notice of Initiation.

American Society of Mechanical Engineers (''ASME'') code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard. Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification. Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A-53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent ASTM A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple-certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers. The primary application of ASTM A–106 pressure pipes and triple-certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications. The scope of this review includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of this review. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–335, ASTM A–106, ASTM A–53, or API 5L standards shall be covered if used in a standard, line or pressure application. For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A-333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this review. Specifically excluded from this review are boiler tubing and mechanical tubing, if such products are not produced to ASTM A–335, ASTM A–106, ASTM A–53 or API 5L specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished oil country tubular goods (''OCTG'') are excluded from the scope of this review, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Finally, also excluded from this review are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

[FR Doc. 00–27688 Filed 10–26–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Assignment and the Reaffirmation of Authority to Make Initial Denials Under the Freedom of Information Act

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of assignment and the reaffirmation of authority to make initial denials under the Freedom of Information Act (FOIA).

SUMMARY: This assigns or reaffirms the authority of Department of Commerce, International Trade Administration officials listed in the attachment to make initial decisions with respect to public requests for ITA records under the Freedom of Information Act (FOIA).

FOR FURTHER INFORMATION CONTACT: Peter Han, Department of Commerce, International Trade Administration, Office of Organization and Management Support, 14th & Constitution Ave., NW., Room 4001, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The officials listed in the October 19, 2000 memorandum from Timothy J. Hauser, Deputy Under Secretary for International Trade, will be responsible for making initial decisions for records in accordance with FOIA.

Dated: October 20, 2000.

Peter Han,

ITA Freedom of Information Officer, Office of Organization and Management Support.

BILLING CODE 3510–25–P

UNITED STATES DEPARTMENT OF COMMERCE
The Deputy Under Secretary for International Trade
Washington, D.C. 20230

OCT 19 2000

MEMORANDUM FOR ATTACHED ADDRESSEES

FROM: Timothy J. Hauser

SUBJECT: Assignment and the Reaffirmation of Authority to Make Initial Denials Under the Freedom of Information Act (FOIA)

This memorandum assigns or reaffirms the authority of officials listed in the attachment to make initial decisions with respect to public requests for ITA records under FOIA. This listing has been amended to include ITA's Assistant Secretaries and Deputy Assistant Secretaries and the Chief Financial Officer and Director of Administration. These officials will be responsible for making initial decisions for those records which originate in their offices. Office Directors will continue to make initial decisions with respect to those records which are originated by or reside within their offices.

The list of ITA officials with denial authority will be published in the Federal Register. If you have any questions or require additional information, please contact Peter Han at ext. 3756 or via e-mail at peter_han@ita.doc.gov.

Attachment

cc: R. LaRussa

ITA FOIA DENYING OFFICIALS

International Trade Administration

Under Secretary for International Trade
Deputy Under Secretary for International Trade
Counselor to the Department
Director, Trade Promotion Coordinating Committee Secretariat
Director, Office of Public Affairs
Director, Office of Legislative and Intergovernmental Affairs

Administration

Chief Financial Officer and Director of Administration
Director, Office of Organization and Management Support
Director, Office of Human Resources Management
Director, Office of Financial Management
Director, Office of Information Resources Management
ITA Freedom of Information Officer

Market Access and Compliance

Assistant Secretary for Market Access and Compliance
Deputy Assistant Secretary for Agreements Compliance
Deputy Assistant Secretary for the Middle East and North Africa
Deputy Assistant Secretary for Europe
Deputy Assistant Secretary for the Western Hemisphere
Deputy Assistant Secretary for Asia and the Pacific
Deputy Assistant Secretary for Africa
Director, Office of Policy Coordination
Director, Office of Multilateral Affairs
Director, Trade Compliance Center
Director, Office of Middle East and North Africa
Director, Office of European Union and Regional Affairs
Director, Office of Eastern Europe, Russia, and the Newly Independent States
Director, Office of Latin American and the Caribbean
Director, Office of NAFTA and Inter-American Affairs
Director, Office of China Economic Area
Director, Office of Pacific Basin
Director, Office of South Asia and Oceania
Director, Office of Japan
Director, Office of Africa

U.S. and Foreign Commercial Service

Assistant Secretary and Director General of the U.S. and Foreign Commercial Service
Deputy Director General of the U.S. and Foreign Commercial Service
Deputy Assistant Secretary for International Operations
Deputy Assistant Secretary for Export Promotion Services
Deputy Assistant Secretary for Domestic Operations
Director, Office of Foreign Service Human Resources
Director, Office of Planning
Director, Office of Information Systems

Trade Development

Assistant Secretary for Trade Development
Deputy Assistant Secretary for Transportation and Technology Industries
Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries
Deputy Assistant Secretary for Service Industries and Finance
Deputy Assistant Secretary for Basic Industries
Deputy Assistant Secretary for Information Technology Industries
Deputy Assistant Secretary for Tourism Industries
Director, Office of Trade and Economic Analysis
Director, Advocacy Center
Director, Office of Export Promotion Coordination
Director, Office of Planning, Coordination and Resource Management
Director, Office of Aerospace
Director, Office of Electronic Commerce
Director, Microelectronics, Medical Equipment and Instrumentation
Director, Office of Telecommunications Technologies
Director, Office of Textiles and Apparel
Director, Office of Consumer Goods
Director, Office of Automotive Affairs
Director, Office of Metals, Materials, and Chemicals
Director, Office of Energy, Infrastructure and Machinery
Director, Office of Export Trading Company Affairs
Director, Office of Finance
Director, Office of Service Industries
Director, Office of Environmental Technologies
Director, Office of Information Technologies

Import Administration

Assistant Secretary for Import Administration
Deputy Assistant Secretary for Antidumping Countervailing Duty Enforcement I
Deputy Assistant Secretary for Antidumping Countervailing Duty Enforcement II
Deputy Assistant Secretary for Antidumping Countervailing Duty Enforcement III
Director for Policy and Analysis
Director, Office of Policy
Director, Office of Accounting
Director, Central Records Unit/Foreign Subsidy Library

Director, Foreign Trade Zones Staff
Director, Statutory Import Programs Staff
Director, Office of AD/CVD Enforcement I
Director, Office of AD/CVD Enforcement II
Director, Office of AD/CVD Enforcement III
Director, Office of AD/CVD Enforcement IV
Director, Office of AD/CVD Enforcement V
Director, Office of AD/CVD Enforcement VI
Director, Office of AD/CVD Enforcement VII
Director, Office of AD/CVD Enforcement VIII
Director, Office of AD/CVD Enforcement IX

[FR Doc. 00–27670 Filed 10–26–00; 8:45 am]

BILLING CODE 3510–25–C

DEPARTMENT OF COMMERCE

International Trade Administration

Private Sector Participation in Overseas Trade Missions

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. Textile Trade Mission to Central America and the Dominican Republic, El Salvador, Honduras, Dominican Republic and Guatemala, December 3–9, 2000. Recruitment closes on November 1, 2000.

For further information contact: Mr. William Dawson, U.S. Department of Commerce. Tel: 202–482–5155, Fax: 202–482–2859, E-Mail: William_Dawson@ita.doc.gov

District Heating Mission to Russia, Moscow and St. Petersburg, May 11–17, 2001. Recruitment closes on January 12, 2001

For further information contact: Ms. Rachel Halpern, U.S. Department of Commerce. Tel: 202–482–4423, Fax: 202–482–0170, E-Mail: Rachel_Halpern@ita.doc.gov

FOR FURTHER INFORMATION CONTACT: Mr. Reginald Beckham, U.S. Department of Commerce. Tel: 202–482–5478, Fax: 202–482–1999.

Dated: October 19, 2000.

Thomas H. Nisbet,

Director, Promotion Planning and Support Division, Office of Export Promotion Coordination.

[FR Doc. 00–27671 Filed 10–26–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101700C]

Fisheries of the Northeastern United States; Atlantic Surf Clam and Ocean Quahog Fisheries; 2001 Cage Tags

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

ACTION: Notice of vendor to provide fishing year 2001 cage tags.

SUMMARY: NMFS informs surf clam and ocean quahog allocation owners that they will be required to purchase their fishing year 2001 cage tags from a vendor.

ADDRESSES: Written inquiries may be sent to Walt Gardiner at: National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930-3799.

FOR FURTHER INFORMATION CONTACT: Walt Gardiner, Fishery Management Specialist, (978) 281-9326.

SUPPLEMENTARY INFORMATION: Federal Atlantic surf clam and ocean quahog fishery regulations at 50 CFR 648.75(b) authorize the Administrator, Northeast Region, NMFS, to specify in the **Federal Register** a vendor from whom cage tags, required under the Atlantic Surf Clam and Ocean Quahog Fishery Management Plan, must be purchased. National Band and Tag Company of Newport, KY, is the authorized vendor of cage tags required for the year 2001 Federal surf clam and ocean quahog fisheries. Detailed instructions for purchasing these cage tags will be provided in a letter to allocation owners within the next several weeks.

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

Dated: October 21, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–27698 Filed 10–26–00; 8:45 am]

BILLING CODE: 3510–22 –S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101900A]

Marine Mammals; File No. 775-1600

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Michael Sissenwine, Northeast Fisheries Science Center, National Marine Fisheries Service, Room 312, 166 Water St., Woods Hole, Massachusetts 02543-1097, has applied in due form for a permit to take seven species of baleen whales, twenty species of odontocete and four species of pinnipeds for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before November 27, 2000.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s): Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-

West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289); and Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298; phone (508) 281-9250; fax (508) 281-9371.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Simona Roberts, 301/713-2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-227).

The Northeast Fisheries Science Center seeks permission to conduct research on seven species of baleen whales, twenty species of odontocetes and four species of pinnipeds. The study area would include all waters of the North Atlantic Ocean, including international waters, from the equator to latitude 80 degrees N except for territorial waters of other nations. The principal purpose of the research, for all species, relates to stock assessment (notably, but not limited to, estimation of abundance and determination of population structure); this is an activity for which NMFS has primary responsibility under the MMPA. Aerial surveys for right whales will be flown at a minimum altitude of 500 feet for the purpose of stock assessment as well to alert mariners of their presence. Types of take include potential harassment through approach (shipboard /aerial), biopsy sampling, acoustic sampling, tagging, and (for pinnipeds) tag/release. Permission is also sought to import and export material (including soft and hard tissue, blood, extracted DNA, and whole dead animals or parts thereof) to and from any country.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 23, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–27699 Filed 10–26–00; 8:45 am]

BILLING CODE: 3510–22 –S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101700G]

Caribbean Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) will hold meetings.

DATES: The meetings will be held on November 14-15, 2000. The Council will convene on Tuesday, November 14, 2000, from 1 p.m. to 5 p.m. through Wednesday, November 15, 2000, from 9 a.m. to 12 noon, approximately.

ADDRESSES: The meetings will be held at the Divi Carina Bay Resort and Casino, 25 Estate Turnerhole, Christiansted, St. Croix, USVI.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918-2577, telephone: (787) 766-5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 102nd regular public meeting to discuss the items contained in the following agenda:

Call to Order
Adoption of Agenda
Consideration of 101st Council Meeting Summary Minutes
Executive Director's Report
Dolphin/Wahoo Fishery Management Plan (FMP) Final Action
-Scientific and Statistical Committee (SSC)/Advisory Panel (AP) Minutes
-Ad-Hoc Committee Meeting Report
Queen Conch FMP Final Action
-Continuation of Discussion of Management Measures
-Honduras-Jamaica Meeting Report
Essential Fish Habitat
-Habitat AP Meeting Minutes
Other Business
-AP Membership

Next Council Meeting

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918-2577, telephone: (787) 766-5926, at least 5 days prior to the meeting date.

Dated: October 20, 2000.

Richard W. Surdi,

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

[FR Doc. 00–27700 Filed 10–26–00; 8:45 am]

BILLING CODE: 3510–22 –S

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Proposed Pine Hills Casino and Resort, Located in Harrison County, Mississippi

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The Mobile District, U.S. Army Corps of Engineers (Corps), intends to prepare a Draft Environmental Impact Statement (DEIS) to address the potential impacts associated with the construction of the proposed Pine Hills Casino and Resort located on the Bay of St. Louis, in Harrison County, Mississippi. The Corps will be evaluating a permit application for the work under the authority of Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. The EIS will be used as a basis for the permit decision and to ensure compliance with the National Environmental Policy Act (NEPA).

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and the DEIS should be addressed to Mr. John McFadyen, Regulatory Branch, phone (334) 690–3261, or Dr. Susan Ivester Rees, Coastal Environment Team, phone (334) 694–4141, Mobile District, U.S. Army Corps of Engineers, P.O. Box 2288, Mobile, AL 36628.

SUPPLEMENTARY INFORMATION:

1. The permit applicant is proposing to construct a casino development on the northern shore of the Bay of St. Louis consisting of the following: A casino mooring facility consisting of breasting dolphins and a 520-foot-long by 330-foot-wide low water sediment control structure. The control structure will consist of 1,250 linear feet of sheet pile and a water aeration system. The 3.9-acre basin within the control structure will be mechanically excavated to minus 7.0 feet, mean low water. The 32,000 cubic yards of excavated material will be deposited at a 15-acre upland disposal site. A 500-foot-long by 300-foot-wide casino barge will be moored in the basin. A 450-foot-long bulkhead will be installed along the shoreline fronting the casino. A 700-foot-long by 8-foot-wide pier and 24-inch diameter water intake/transmission line will be constructed east of the casino. Related upland development includes a 30 story, 1,400-room hotel; an access road from the Interstate Highway 10 Kiln-DeLisle exit; parking facilities for 3,500 vehicles; stormwater detention ponds; and three entrance road bridges spanning non-tidal wetlands. Water and sewer facilities will be constructed by Pine Hills Development Partnership and turned over to Harrison County for operation and maintenance. The proposed project will result in the dredging of approximately 3.2 acres of shallow water bottoms for the casino mooring basin. Approximately 0.033 acre of marsh vegetation at the casino basin site has been relocated to an adjacent 0.1 acre site. No other wetlands or ''special aquatic sites'' will be excavated or filled. Upland development associated with the project will cover up to 63 acres of primarily pine plantation.

2. Alternatives to the applicant's proposal may exist which would reduce the impacts to the Bay of St. Louis. These could include alternate sites, or alternative sites layouts, or alternative operational methods.

3. *Scoping:* a. The Corps invites full public participation to promote open communication on the issues surrounding the proposal. All Federal, State, and local agencies, and other persons or organizations that have an interest are urged to participate in the NEPA scoping process. A public meeting will be held to help identify significant issues and to receive public input and comment.

b. The DEIS will analyze the potential social, economic, and environmental impacts to the local area resulting from the proposed project. Specifically, the following major issues will be analyzed in depth in the DEIS: hydrologic and hydraulic regimes, essential fish habitat and other marine habitat, air quality, cultural resources, wastewater treatment capacities and discharges, transportation systems, alternatives, secondary and cumulative impacts, socioeconomics, environmental justice (effect on minorities and low-income groups), and protection of children (Executive Order 13045).

c. The Corps will serve as the lead Federal agency in the preparation of the DEIS. It is anticipated that the following agencies will be invited and will accept cooperating agency status for the preparation of the DEIS: U.S. Environmental Protection Agency, U.S. Department of the Interior-Fish and Wildlife Service, U.S. Department of Commerce—National Marine Fisheries Service, U.S. Department of Transportation—Federal Highway Administration.

4. The scoping meeting will be held on November 21, 2000 at the DeLisle Elementary School in DeLisle, Mississippi beginning at 6:30 p.m.

5. It is anticipated that the DEIS will be made available for public review in summer 2001.

Ronald A. Krizman,

Chief, Regulatory Branch.

[FR Doc. 00–27647 Filed 10–26–00; 8:45 am]

BILLING CODE 3710–CR–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–38–000]

Colorado Interstate Gas Company; Notice of Compliance Filing

October 23, 2000.

Take notice that on October 11, 2000, Colorado Interstate Gas Company (CIG), tendered for filing a letter stating that CIG believes it is currently in full compliance with Section 284.12(c)(2)(ii) of the Commission's regulations. Order No. 587–L requires pipelines to be in compliance with this regulation by November 1, 2000, to permit shippers to offset imbalances on different contracts held by the shipper and to trade imbalances.

CIG further states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

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).

Davis P. Boergers,

Secretary.

[FR Doc. 00–27622 Filed 10–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–409–010]

Northwest Pipeline Corporation; Notice of Compliance Filing

October 23, 2000.

Take notice that on October 16, 2000, Northwest Pipeline Corporation

(Northwest) tendered for filing as part of its FERC Gas Tariff, a number of tariff sheets which apply to the period from February 1, 1996 through February 28, 1997 during which Northwest's rates as established in Docket No. RP95–409 are applicable. The specific tariff sheets are enumerated in Appendix A of the filing.

Northwest states that the purpose of this filing is to comply with the Commission's June 1, 1999 and September 29, 2000 orders in Docket No. RP95–409 (Orders).

Northwest states that its compliance filing is consistent with the Commission's Orders and directives that have been issued with respect to the Docket No. RP95–409 proceeding.

Northwest states that a copy of this filing has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed 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. 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. 00–27621 Filed 10–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–111–000, et al.]

Cinergy Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

October 19, 2000.

Take notice that the following filings have been made with the Commission:

1. Cinergy Services, Inc.

[Docket No. ER01–111–000]

Take notice that on October 13, 2000, Cinergy Services, Inc. (Cinergy) and Northern/AES Energy, L.L.C., are requesting a cancellation of Service Agreement No. 99, under Cinergy Operating Companies, Resale of Transmission Rights and Ancillary Service Rights, FERC Electric Tariff Original Volume No. 8.

Cinergy requests an effective date of October 9, 2000.

Comment date: November 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Commonwealth Edison Company

[Docket No. ER01–125–000]

Take notice that on October 16, 2000, Commonwealth Edison Company (ComEd), tendered for filing an Interconnection Agreement with Duke Energy Lee, LLC (Duke).

ComEd requests an effective date of October 17, 2000 and accordingly seeks waiver of the Commission's notice requirements.

Copies of the filing were served on Duke and the Illinois Commerce Commission.

Comment date: November 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. PJM Interconnection, L.L.C.

[Docket No. ER01–128–000]

Take notice that on October 16, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing first revised sheet No. 87U to its Open Access Transmission Tariff containing revisions to the ''PJM Assignment Matrix'' which governs the assignment of costs from PJM's various internal divisions to PJM's unbundled services. PJM states that the revisions are necessary to reflect an internal reorganization of PJM.

Copies of this filing were served upon the PJM Members, and the state electric utility regulatory commissions within the PJM control area.

Comment date: November 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Consolidated Edison Company of New York, Inc.

[Docket No. ER01–129–000]

Take notice that on October 16, 2000, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 130, a facilities agreement with the New York Power Authority (NYPA).

Con Edison has requested that the Supplement take effect as of September 1, 2000.

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: November 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Consolidated Edison Company of New York, Inc.

[Docket No. ER01–130–000]

Take notice that on October 16, 2000, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule FERC 117, an agreement to provide interconnection and transmission service to Keyspan/Long Island Power Authority (Keyspan). The Supplement provides for a decrease in the annual fixed rate carrying charges.

Con Edison has requested that this decrease take effect as of September 1, 2000.

Con Edison states that a copy of this filing has been served by mail upon Keyspan.

Comment date: November 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Cinergy Services, Inc.

[Docket No. ER01–131–000]

Take notice that on October 13, 2000, Cinergy Services, Inc. (Cinergy) and American Energy Trading, Inc., are requesting a cancellation of Service Agreement No. 135, under Cinergy Operating Companies, Market-Based Power Sales Tariff—MB, FERC Electric Tariff Original Volume No. 7.

Cinergy requests an effective date of October 16, 2000.

Comment date: November 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER01–132–000]

Take notice that on October 13, 2000, Cinergy Services, Inc. (Cinergy) and American Energy Trading, Inc., tendered for filing a request for cancellation of Service Agreement No. 135, under Cinergy Operating Companies, Cost-Based Power Sales Tariff—CB, FERC Electric Tariff Original Volume No. 6.

Cinergy requests an effective date of October 16, 2000.

Comment date: November 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER01–133–000]

Take notice that on October 16, 2000, Cinergy Services, Inc. (Cinergy) and South Jersey Energy Company are requesting a cancellation of Service Agreement No. 214, under Cinergy Operating Companies, Market-Based

Power Sales Tariff—MB, FERC Electric Tariff Original Volume No. 7.

Cinergy requests an effective date of October 16, 2000.

Comment date: November 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Cinergy Services, Inc.

[Docket No. ER01–134–000]

Take notice that on October 16, 2000, Cinergy Services, Inc. (Cinergy) and South Jersey Energy Company tendered for filing a request for cancellation of Service Agreement No. 211, under Cinergy Operating Companies, Cost-Based Power Sales Tariff—CB, FERC Electric Tariff Original Volume No. 6.

Cinergy requests an effective date of October 16, 2000.

Comment date: November 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Pacific Gas and Electric Company

[Docket No. ER01–135–000]

Take notice that on October 16, 2000, Pacific Gas and Electric Company (PG&E) tendered for filing a Generator Special Facilities Agreement (GSFA) between PG&E and Sunrise Cogeneration and Power Company (Sunrise) providing for Special Facilities and the parallel operation of Sunrise's generating facility and the PG&E-owned electric system.

This GSFA permits PG&E to recover the ongoing costs associated with owning, operating and maintaining the Special Facilities including the cost of any alterations and additions. As detailed in the GSFA, PG&E proposes to charge Sunrise a monthly Cost of Ownership Charge equal to the rate for transmission-level, customer-financed facilities in PG&E's currently effective Electric Rule 2, as filed with the California Public Utilities Commission (CPUC). PG&E's currently effective rate of 0.31% for transmission-level, customer-financed Special Facilities is contained in the CPUC's Advice Letter 1960–G/1587–E, effective August 5, 1996, a copy of which is included in this filing.

Copies of this filing have been served upon Sunrise and the CPUC.

Comment date: November 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Delta Person Limited Partnership

[Docket No. ER01–138–000]

Take notice that on October 16, 2000, Delta Person Limited Partnership (Delta), tendered for filing Notice of Succession pursuant to Section 35.16 of the Commission's Regulations. As a result of a name change, Delta is succeeding to the FERC Electric Rate Schedule No. 1 of Cobisa-Person Limited Partnership, effective September 25, 2000.

Comment date: November 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER01–139–000]

Take notice that on October 16, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing the following: (1) A Notice of Letter of Acquisition of Merger of Citizens Power LLC into Edison Mission Marketing & Trading; (2) a Notice of Name Change from Amoco Energy Trading Corporation to BP Energy Company; (3) a Notice of Name Change from Williams Energy Services Company to Williams Energy Marketing & Trading Company; and (4) a Notice of Name Change from Engage Energy US, L.P. to Coastal Merchant Energy, L.P.

Cinergy respectfully requests waiver of any applicable regulation to the extent necessary to make the tariff changes effective as of the date of each of the listed name changes.

A copy of the filing was served upon the affected parties.

Comment date: November 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. New York Independent System Operator, Inc.

[Docket Nos. ER00–3591–000 and ER00–3591–001]

Take notice that on October 16, 2000, Enron Power Marketing, Inc. (EPMI) filed a non-substantive correction to a sentence in the prior version of the affidavit of Scott Englander in order to clarify its meaning.

Comment date: November 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. PPM One LLC

[Docket No. EG01–5–000]

Take notice that on October 16, 2000, PPM One LLC filed with the Federal Energy Regulatory Commission an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations and Section 32 of the Public Utility Holding Company Act of 1935, as amended. The applicant, a limited liability company organized under the laws of the State of Oregon, is a wholly-owned subsidiary of PacifiCorp Power Marketing, Inc. PacifiCorp Power Marketing, Inc., an Oregon corporation, is a wholly-owned subsidiary of PacifiCorp Group Holdings, Inc., an Oregon corporation with general offices in Portland, Oregon. PacifiCorp Group Holdings, Inc. is, in turn, a wholly-owned subsidiary of PacifiCorp, an Oregon corporation and an investor owned electric utility company with general offices in Portland, Oregon. PacifiCorp is a subsidiary of ScottishPower plc, a public limited corporation organized under the laws of Scotland. ScottishPower holds, through subsidiaries, all of the common stock of PacifiCorp. The applicant states that it will be engaged directly and exclusively in the business of owning an eligible facility and selling at wholesale at market-based rates electric energy from the Facility. The facility consists of three NEG Micon Model NM 700/44 Wind Turbines and related plant facilities located on the Bureau of Land Management rights-of-way in Riverside County, California.

Copies of the application have been served upon the California Public Utilities Commission, the Oregon Public Utility Commission, the Washington Utilities and Transportation Commission, the Idaho Public Utilities Commission, the Public Service Commission of Utah and the Wyoming Public Service Commission, the ''Affected State commissions,'' and the Securities and Exchange Commission.

Comment date: November 9, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance). Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18

CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–27619 Filed 10–26–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL98–1–001]

Public Access to Information and Electronic Filing; Notice of Electronic Filing Demonstrations

October 19, 2000.

Take notice that the Commission Staff (Staff) will conduct demonstrations for filing comments electronically (excluding comments on rulemakings).

The electronic filing demonstrations will be held following the Commission meetings on October 25, 2000 and November 8, 2000.

The demonstration on October 25, 2000 will be held in Hearing Room 1 and the demonstration on November 8 will be held in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The electronic filing demonstrations are open to all interested persons.

The Capitol Connection will offer the electronic filing demonstration on November 8, 2000, as a special FERC meeting, *live* over the Internet as well as via telephone and satellite. For a reasonable fee, you can receive the demonstration in your office, at home or anywhere in the world. To find out more about The Capitol Connection's live Internet, phone bridge or satellite coverage, contact David Reininger or Julia Morelli at (703) 993–3100 or visit Capital Connection's website at *www.capitolconnection.gmu.edu*). The Capitol Connection also offers FERC Open Meetings through its Washington, DC area television service.

David Boergers,

Secretary.

[FR Doc. 00–27620 Filed 10–26–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6612–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167, or www.epa.gov/oeca/ofa, Weekly receipt of Environmental Impact Statements, Filed October 16, 2000 Through October 20, 2000, Pursuant to 40 CFR 1506.9.

EIS No. 000363, Draft EIS, AFS, MT, Ashland, Post-Fire Project, Proposal to Implement Restoration Activities to Maintain Watershed Custer National Forest Powder River and Rosebud Counties, MT, Due: December 11, 2000, Contact: Elizabeth McFarland (406) 784–2344.

EIS No. 000364, Final EIS, COE, CA, Upper Newport Bay Restoration Project To Develop a Long-Term Management Plan to Control Sediment Deposition Orange County, CA, Due: November 27, 2000, Contact: Larry Smith (213) 452–3846.

EIS No. 000365, Final EIS, FHW, WV, VA, WV–9 Improvements, from Charles Town Bypass (U.S. 340) to the Virginia Line, Funding and COE Section 404 Permit, Shenandoah River, Jefferson Co., WV and Loudoun Co., VA, Due: December 04, 2000, Contact: Thomas J. Smith (304) 347–5928.

EIS No. 000366, Final EIS, COE, CA, Santa Ana River Mainstem Project Including Santiago Creek, Proposal to Complete Channel Improvements along San Timoteo Creek Reach 3B to provide Flood Protection, San Bernardino County, CA, Due: November 27, 2000, Contact: Joy Jaiswal (213) 452–3871.

EIS No. 000367, Final EIS, COE, NC, Dare County Beaches (Bodie Island Portion) Hurricane Wave Protection and Beach Erosion Control, The towns of Nags Head, Kill Devil Hills, Kitty Hawk, Dare County, NC, Due: November 27, 2000, Contact: Chuck Wilson (910) 251–4746.

EIS No. 000368, Final EIS, COE, AZ, Rio de Flag Flood Control Study, Improvement Flood Protection, City of Flagstaff, Coconino County, AZ, Due: November 27, 2000, Contact: Tim Smith (202) 761–4172.

Amended Notices

EIS No. 000307, Draft EIS, FRC, AL, FL, Buccaneer Natural Gas Pipeline Project, Construction and Operations, To Deliver Natural Gas for Electric Power Generation, Mobile County, AL and Pasco, Polk, Hardee, Lake and Osceola Counties, FL, Due: November 07, 2000, Contact: Paul McKee (202) 208–1611.

Revision of FR notice published on 09/08/2000: CEQ Comment Date has been Extended from 10/24/2000 to 11/07/2000.

Dated: October 24, 2000.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 00–27677 Filed 10–26–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6611–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 2000 (65 FR 20157).

Draft EISs

ERP No. D–COE–H36109–MO Rating EO2, Chesterfield Valley Flood Control Study, Improvement Flood Protection, City of Chesterfield, St. Louis County, MO.

Summary: EPA raised objections, noting that significant floodplain management issues exist. EPA encouraged the Corps to reevaluate alternatives to lessen impacts.

ERP No. D–COE–K36134–CA Rating 3, Murrieta Creek Flood Control and Protection, Implementation, Riverside County, CA.

Summary: EPA stated that the draft EIS failed to adequately assess potentially significant environmental impacts of the proposed project. EPA believes that the proposed project would result in significant unmitigated impacts to wetlands and other waters of the U.S., important wildlife habitat, and air quality and that alternatives exist that would reduce these impacts, provide flood protection, and restore and enhance Murrieta Creek within the proposed project area. EPA has determined that this project as proposed is not consistent with or otherwise in

compliance with the Section 404(b)(1) Guidelines of the Clean Water Act. A Clean Air Act conformity determination is also needed for this project.

ERP No. D–DOE–L00008–00 Rating EC2, Programmatic—Accomplishing Expanded Civilian, Nuclear Energy Research and Development and Isotope Production Missions in the United States, Including the Role of the Fast Flux Test, ID, TN, WA.

Summary: EPA expressed concerns about: The project need; site-specific impacts from the proposed accelerator(s) or research reactor; the project's consistency with future land uses at Superfund sites and the funding of clean-up at these sites; and, the inclusion of decommissioning of the fast flux test facility in the EIS. EPA requests that information to address these concerns be included in the final EIS/ROD.

ERP No. D–MMS–G39008–00 Rating EC2, Programmatic EIS—Proposed Use of Floating Production, Storage and Offloading Systems on the Gulf of Mexico, Outer Continental Shelf, Western and Central Planning Areas, TX, LA, MS, AL and FL.

Summary: EPA expressed environmental concerns relating to air quality/general conformity and requests additional information on these issues. In addition, EPA suggests Alternative B (Alternative A with General Restrictions or Conditions) be considered as the preferred alternative.

ERP No. D–NRC–J00031–UT Rating EC2, Skull Valley Band of Goshute Indians Reservation Project, Construction and Operation of Independent Spent Fuel Storage Installation and Related Transportation Facilities, Permits and Approvals, Tooele County, UT.

Summary: EPA expressed concerns about occupational radiation exposures, about sufficiency of financial assurance to protect the environment, transportation emergency response and water quality.

ERP No. D–USN–K11034–CA Rating LO, Point Mugu Sea Range Naval Air Warfare Center Weapons Division (NAWCWPWS), Proposes To Accommodate TMD Testing and Training, Additional Training Exercises, Ventura, Los Angeles, Santa Barbara, San Diego and San Luis Obispo Counties, CA.

Summary: While EPA has no objection to the proposed action, EPA requests that the Final EIS and the Record of Decision include a formal commitment to project monitoring and mitigation.

ERP No. DS–AFS–G65062–NM Rating LO, Agua/Caballos Timber Sale, Harvesting Timber and Managing Existing Vegetation, New Information and a New Preferred Alternative, Carson National Forest, EL Rito Ranger District, Arriba County, NM.

Summary: EPA expressed lack of objections.

ERP No. DS–COE–K32010–HI Rating EC2, Modifications to (Kalaeloa) Barbers Point Harbor, Proposal to Enhance Harbor Operations and Economic Efficiency, and Improve Port Safety, Oahu, HI.

Summary: EPA expressed environmental concerns regarding water quality impacts due to project construction and operation, adverse impacts to coral populations, and mitigation for adverse impacts. Based upon information in the DSEIS it appears that wastewater from harbor operations may contribute to the documented water quality problems of the harbor and nearshore waters, and, accordingly, EPA believes it is appropriate to evaluate wastewater management improvements at the harbor as a component to this project.

ERP No. DS–COE–K36098–CA Rating EO2, Prado Dam Water Conversion Plan, Implementation, New Information Concerning New and Modified Flood Protection Features, Remaining Features of the Santa Ana River Project (SARP) and Stabilization of the Bluff Toe at Norco Bluffs, Riverside, Orange and San Bernardino Counties, CA.

Summary: EPA expressed environmental objections based upon projected and potential impacts to air quality, and aquatic resources, as well as the adequacy of mitigation for air and water impacts. EPA asked the Corps to identify additional mitigation measures to reduce air emissions associated with the Clean Water Act Section 404(b)(1) regulations. EPA raised serious concerns that the EIS presented an extremely limited range of alternatives for the three project components.

Final EISs

ERP No. F–BLM–G65073–NM Farmington Field Office Riparian and Aquatic Habitat Management, To Restore and Protect, Farmington Riparian and Aquatic Habitat Management Plan, San Juan, McKinley, Rio Arriba and Sandoval Counties, NM.

Summary: EPA expressed no objections on the Final EIS.

ERP No. F–BLM–G65074–NM Taos Field Office Riparian and Aquatic Habitat Management, To Restore and Protect, Colfax, Harding, Los Alamos, Mora, Rio Arriba, San Miquel, Santa Fe, Taos and Unison Counties, NM.

Summary: EPA expressed lack of objections on the Final EIS.

ERP No. F–COE–E01013–FL Programmatic EIS—Rock Mining—Freshwater Lakebelt Plan, Limestone Mining Permit, Section 404 Permit, Implementation, Miami-Dade County, FL.

Summary: EPA raised concerns over the cumulative impacts of this proposal, the significant uncertainties associated with the effectiveness of subsequent assessment/planning measures as well as in determining whether environmental impacts can be mitigated to acceptable levels.

ERP No. F–COE–K36118–CA Guadalupe River Watershed Planning Study, Multi-Objective Capital Improvement Project on the Guadalupe River between Highway 101 to Interstate 880 and Interstate 280 to Blossom Hill Road, Santa Clara Valley Water District, Santa Clara County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–NPS–K61150–CA Anacapa Island Restoration Project, Implementation, Channel Islands National Park, Ventura County, CA.

Summary: EPA's comments were adequately addressed.

ERP No. F–SFW–K90030–CA San Dieguito Wetland Restoration Project, Implementation, Comprehensive Restoration Plan, COE Section 404 Permit, Cities of Del Mar and San Diego, San Diego County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–USN–K11103–GU Surplus Navy Property Identified in the Guam Land Use Plan (GLUP '94) for Disposal and Reuse, Implementation, GU.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FA–IBR–J35005–00 Animas-La Plata Project (APL Project), Municipal and Industrial Water Supply, Reservoir Construction in Ridges Basin, Implementation and Water Acquisition, Additional Information concerning Project Alternatives Developed in 1996 through 1997, CO and NM.

Summary: EPA provided suggestions to ameliorate the adverse impact of operating the project upon the Jicarilla Apache and Navajo Tribes in New Mexico, including prioritizing construction of Indian water projects in the San Juan Basin based on currently unmet public health supply needs, considering legislative measures to allow the Colorado Ute Tribes to market their water to the tribal needs in New Mexico for the Navajo Nation and the Jicarilla-Apache Tribe, and equitably allocating water provided to San Juan River federal beneficiaries of the Animas-La Plata Project. EPA also recommended that the Record of

Decision include a commitment that allocation of water to San Juan River Basin users of federal facilities in the event of a shortage for fish flows will be reduced equitably, including the project beneficiaries of the Animas-La Plata Project.

ERP No. FS–UAF–G11031–TX Programmatic EIS—Kelly Air Force Base (AFB) Disposal and Reuse, New and Updated Information, Joint Military and Civil Use of the Runway and other Airfield Facilities, Joint Use Agreement, Bexar County, San Antonio, TX.

Summary: EPA has no further comments to offer and awaits receipt of the Record of Decision.

Dated: October 24, 2000.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 00–27678 Filed 10–26–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00686; FRL–6752–3]

National Assessment of the Worker Protection Program - Workshop #2; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The National Assessment of the Worker Protection Program Workshop #2 will be held in Sacramento, California. Workgroups will be established to further discuss national worker protection implementation andprogram effectiveness as related to training, enforcement, compliance and retaliation, and communications. This is the second in a series of workshops and represents an opportunity for EPA, states, agricultural employers and worker representatives to engage in problem solving workgroup discussions. In cooperation with the National Environmental Education and Training Foundation, the Office of Pesticide Programs is hosting this national assessment meeting to further discuss the agricultural worker protection regulation, the implementation and effectiveness of its provisions, the enforcement at the state level, and the possible future directions for the program.

DATES: December 11–13, 2000. The workshop is scheduled to begin at 12:30 pm on Monday, December 11 and will conclude at 5:30 pm. The Tuesday and Wednesday sessions begin at 8:00 am and end at 5:30 pm.

ADDRESSES: The meeting will be held at the Hyatt Regency Sacramento, 1209 L Street, Sacramento, California 95814.

FOR FURTHER INFORMATION CONTACT: Michael Walsh, U.S. EPA Office of Pesticide Programs (7506C), 1200 Pennsylvania Avenue NW, Washington, DC 20460. Telephone: (703) 308–2972. e-mail: walsh.michael@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general, however, the size of the meeting facilities could limit the number of participants. This action may be of interest to farm worker groups, agricultural employers, state governments, county extension services, and pesticide product manufacturers. If you have any questions regarding the applicability of this action to a particular entity, consult the party listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Copies of this Document?

Electronically. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. You may also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

III. How Can I Participate in this Meeting and is there a Deadline?

You may request to participate in this meeting and register by phone, by fax, through the mail, or electronically by no later than November 14, 2000. Since space is limited, we recommend registering as soon as possible. Please contact Meetings Management, Inc., P.O. Box 30045, Alexandria, Virginia 22310, Tel: (703) 922–7944, Fax: (703) 922–7780, e-mail: Mmagnini@BellAtlantic.net. Please also note that you must make your own hotel room reservations.

List of Subjects

Environmental protection, agricultural worker protection.

Dated: October 19, 2000.

Anne E. Lindsay,

Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 00–27663 Filed 10–26–00; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 20, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 26, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW, Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0405.

Title: Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station.

Form No.: FCC 349.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit, Not-for-profit institutions.

Number of Respondents: 1,050.

Estimated Hours Per Response: 5–19 hours depending on application type (1–3 hours applicant burden; 4–17 hours contract costs).

Frequency of Response: On occasion.

Cost to Respondents: $2,689,500.

Estimated Total Annual Burden Hours: 2750.

Needs and Uses: FCC 349 is used to apply for authority to construct a new FM translator or FM booster broadcast station, or to make changes in the existing facilities of such stations. This collection also includes the third party disclosure requirement of Section 73.3580. This section requires local public notice in a newspaper of general circulation of the filing of all applications for new or major change in facilities. This notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be placed in the public inspection file along with the application. In addition, all mutually exclusive NCE proposals for the reserved band currently on file with the Commission will be required to supplement their applications with portions of the revised FCC 349 necessary to make a selection under the new point system. The Commission will issue a public notice announcing the procedures to be used in this process. The data are used by FCC staff to ensure that the applicant meets basic statutory requirements and will not cause interference to other licensed broadcast services. In the case of mutually exclusive qualified applicants, the information will be used to determine which proposal would best serve the public interest.

OMB Approval No.: 3060–0034.

Title: Application for Construction Permit for Reserved Channel Noncommercial Educational Broadcast Station.

Form No.: FCC 340.

Type of Review: Extension of currently approved collection.

Respondents: Not-for-profit institutions.

Number of Respondents: 1970.

Estimated Hours Per Response: 15–76 hours depending on application type (2–4 hours applicant burden; 13–68 hours contract costs).

Frequency of Response: On occasion.

Cost to Respondents: $8,200,645.

Estimated Total Annual Burden Hours: 4370.

Needs and Uses: FCC 340 is used to apply for authority to construct a new noncommercial educational (NCE) FM, TV and DTV broadcast station, or to make changes in the existing facilities of such a station. The FCC 340 is to be used for channels that are reserved exclusively for NCE use. This collection also includes the third party disclosure requirement of Section 73.3580 which requires local public notice in a newspaper of general circulation of the filing of all applications for new or major changes in facilities. In addition, all mutually exclusive NCE proposals for the reserved band currently on file with the Commission will be required to supplement their applications with portions of the revised FCC 340 necessary to make a selection under the new point system. The Commission will issue a public notice announcing the procedures to be used in this process. The data are used by FCC staff to determine whether the applicant meets basic statutory requirements to become or remain a Commission licensee and to ensure that the public interest would be served by grant of the application. In the case of mutually exclusive qualified applicants, the information will be used to determine which proposal would best serve the public interest.

OMB Approval No.: 3060–0948.

Title: MM Docket No. 95–31—Noncommercial Rules.

Form No.: None.

Type of Review: Extension of currently approved collection.

Respondents: Not-for-profit institutions.

Number of Respondents: 435.

Estimated Hours Per Response: 0.25–3 hours (depending on application type (0.25–2 hours applicant burden; 1–2 hours contract costs).

Frequency of Response: On occasion.

Cost to Respondents: $33,750.

Estimated Total Annual Burden Hours: 485.

Needs and Uses: On April 4, 2000, the Commission adopted a Report and Order in MM Docket No. 95–31 in the Matter of Reexamination of the Comparative Standards for Noncommercial Educational Applicants. This Report and Order adopted new procedures to select among competing applicants for noncommercial educational (NCE) broadcast channels. The Commission will use a point system to select among mutually exclusive applicants on reserved channels, to streamline the current selection process and make it faster and simpler for applicants and for the Commission. The Commission will use filing windows for new and major changes to NCE stations. In addition, the following rule sections were revised that include new information collections:

Section 73.202 was revised to provide that entities that would be eligible to operate a noncommercial educational broadcast station can request that a nonreserved FM channel be allotted as reserved only for NCE broadcasting. This request must include a demonstration as specified in (a)(1)(i) and (ii) of this rule section.

Section 73.3527 was revised to include that documentation of any points claimed in an application for a NCE broadcast station in the reserved band must be kept in the public inspection file.

Section 73.3572 was revised to require an application for a NCE broadcast station on a reserved channel to submit to the FCC's public reference room supporting documentation of the points claimed in its application form.

The demonstration provided with the request for an allotment is used by FCC staff to determine whether there is a greater need for a noncommercial channel versus a commercial channel. The availability of supporting documentation concerning points claimed will enable any involved party to verify and/or dispute that claim and will enable the Commission to do random audits of the applicant point certifications.

OMB Approval No.: 3060–0897.

Title: MDS and ITFS Two-Way Transmissions.

Form No.: None.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit, not-for-profit institutions.

Number of Respondents: 130,888.

Estimated Hours Per Response: 0.083–41 hours (depending on application type (0.166–40 hours applicant burden; 0.166–5.25 hours contract costs).

Frequency of Response: On occasion.

Cost to Respondents: $5,431,032.

Estimated Total Annual Burden Hours: 223,355.

Needs and Uses: This collection includes rules that collectively form the MDS and ITFS two-way services. The rules for two-way transmissions for MDS and ITFS will allow two-way licensing and provide greater flexibility in the use of the allotted spectrum to licensees. The Commission will use this information to ensure that MDS and ITFS applicants, conditional licensees and licensees have considered properly under the Commission's rules the potential for harmful interference from their facilities.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–27674 Filed 10–26–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2447]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

October 19, 2000.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by (November 13, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: Redesignation of the 17.7–19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7–20.2 GHz and 27.5–30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3–17.8 GHz and 24.75–25.25 GHz Frequency Bands for Broadcast Satellite-Service Use (IB Docket No. 98–172, RM–9005, RM–9118).

Number of Petitions Filed: 4.

Subject: Implementation of Video Description of Video Programming (MM Docket No. 99–339).

Number of Petitions Filed: 8.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–27586 Filed 10–26–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

National Flood Insurance Program; Desktop Rating of Flood Insurance Policies

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of forum with request for ideas and participants.

SUMMARY: We (FEMA) will hold a forum on the feasibility of identifying alternative methods for obtaining necessary risk and elevation information to rate flood insurance policies. The goal of the forum is to foster the development of a desktop system that supports the actuarial rating of a flood insurance policy and the floodplain management requirements of the National Flood Insurance Program. We seek a solution that makes the risk, base flood elevation and lowest floor elevation data necessary to rate a flood insurance policy available to agents at their desks.

DATES: We will hold the forum on December 13, 2000.

Please send written responses to the ideas and questions that we pose by November 27, 2000.

ADDRESSES: We will hold the forum in the Horizon Ballroom of the International Trade Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC 20004.

Please send written responses to Edward Pasterick at the address immediately below.

FOR FURTHER INFORMATION CONTACT: Edward Pasterick, Federal Insurance Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington DC 20472, (202) 646–3443, or (email) *edward.pasterick@fema.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Flood Insurance Program (NFIP) provides coverage against flood damage to property owners in communities that agree to adopt and enforce regulations designed to ensure safer future construction of buildings in high-risk flood zones. The provision of insurance, the regulation of the floodplain and the enforcement of the mandatory purchase requirements depend on three things:

- *Flood risk information* or certain key information about the nature and extent of the flood risk in a given area,
- *Elevation of the structure,* and
- Structural characteristics, such as the number of floors and occupancy type.

Flood Risk Information. The Federal Emergency Management Agency (FEMA) provides flood-zone information in the form of a Flood Insurance Study and Flood Insurance Rate Map (FIRM). The FIRM outlines the degree and extent of the flood risk in a given jurisdiction and serves as the guiding document for communities in the regulation of floodplain construction and for lenders in enforcing the mandatory purchase requirements. It also serves insurance companies and agents as the source of needed risk information for writing and rating applications for flood insurance under the NFIP. The primary flood risk characteristics shown on the FIRMs are the areas inundated by the one percent annual probability flood and the elevation relative to the mean sea level to which the floodwaters will rise. The latter is the Base Flood Elevation (BFE).

Elevation of the Structure. Individual property owners, through licensed surveyors and engineers, provide the elevation information needed to guide floodplain construction and to rate insurance applications. The elevation certificate contains this information, which shows the elevation relative to the mean sea level of the lowest floor of a structure or lowest floor elevation (LFE). The community must ensure that the LFE of a new structure built in the Special Flood Hazard Area (SFHA) [1] after the effective date of a FIRM is at or above the BFE shown on the FIRM. The insurance agent writing an application for flood insurance on the structure must calculate the difference between the BFE and the LFE to determine the proper rate for coverage. As a condition of its participation in the NFIP the community must maintain this elevation information in its records.

Structural Characteristics. The insurance agent obtains the relevant structural characteristics from the insured. For example, the property owner can supply information about the number of floors, occupancy type, date of construction, etc. to the agent.

Several factors currently affect the ease of writing flood insurance:

- Access to flood risk information is more difficult for insurance agents than the risk information other lines of property insurance need. Since the flood zone and BFE needed for rating are on the community's FIRM, agents must maintain a paper copy of every effective FIRM for the communities in which they write policies. Locating a property on the paper copy of the FIRM has been a problem for agents from the outset of the NFIP, a problem that we have not diminished substantially over the years. Flood Zone Determination (FZD) companies and some Write Your Own (WYO) companies digitize much of the information on the FIRMs and now provide this information to some agents. However, zone information is far from

[1] The Special Flood Hazard Area is an area of land that would be inundated by a flood having a one percent chance of occurring in any given year (also referred to as the base or 100-year flood). Flood insurance is required for insurable structures within the SFHA to protect Federal financial investments and assistance used for acquisition and/or construction purposes within communities participating in the NFIP.

universally available from the WYO companies, and agents are unwilling to pay the fee that FZD companies charge for the service. The primary clients of the FZD companies are federally regulated lenders who need the information to comply with the mandatory flood insurance purchase requirements of the National Flood Insurance Reform Act of 1994. Lenders can pass along the fee for the service to borrowers as part of a mortgage loan's closing costs. However, insurance agents cannot do the same with their customers because charging for this service would jeopardize their competitive position. Over the next year, we plan to make all effective maps available in Raster scan version through the Map Service Center. The digital files, which support the Government Printing Office's requirement for computer-to-plate printing, will be available on FEMA's website and on CD. This will greatly improve accessibility for agents and should eliminate the need to maintain paper copies of maps.

• An applicant for flood insurance may need to provide the LFE of a property in the form of an elevation certificate completed by a licensed engineer or surveyor.[2] The cost for the certificate is usually more than $200. Certain communities, notably those participating in the NFIP's Community Rating System (CRS), provide at least some certificates from their records, but again, elevation certificates are not universally available and not readily accessible.

Objective

The reliance on data that are difficult to obtain has led the Federal Insurance Administration (FIA) and the Mitigation Directorate to pursue the feasibility of identifying alternative methods for obtaining necessary risk and elevation information to rate a flood insurance policy. We seek a solution that makes the risk and elevation data necessary to rate a flood insurance policy available to agents at their desks.

We would like to see the private sector develop solutions to this problem and are trying to identify the optimum way to promote such. This can include the acceptance of risk information for rating purposes derived through methodologies other than those that we currently use, so long as we are sure that the information will stand up to actuarial analysis and support sound floodplain management.

Our goal is to foster the development of a desktop system that supports the actuarial rating of a flood insurance policy and the floodplain management requirements of the NFIP. We have identified two possible strategies to develop a desktop rating system for flood insurance policies that we do not intend to be exclusive or preemptive. However, we welcome creative alternative approaches.

Strategy A—Continue the current approach for identifying the flood risk and rating a flood insurance policy, but develop a means to provide elevation information in a more easily accessible manner at the point of sale. The current method uses FEMA flood hazard zones, FEMA base flood elevations and the difference between a structure's lowest floor and the base flood elevation to determine risk. This strategy requires elevation information for each individual structure and a means to efficiently gather into a single, accessible database all available elevation certificates for structures in the floodplain and continually to update this database as new structure elevation information becomes available. Alternatively, this strategy would result in an efficient, cost-effective way of collecting LFE en masse.

Strategy B—Continue the current approach for identifying the flood risk and rating a flood insurance policy, but relax the requirement for elevation certificates for individual structures. Explore ways to use new mapping technologies and approaches, combined with other property data, to gather elevation data. For example, Light Detection and Ranging (LIDAR) and InterFerometric Synthetic Aperture Radar (IFSAR) can provide information on the lowest adjacent grade near a structure from which it is possible to determine the ground elevation and estimate the structure's lowest floor elevation, measured from that ground elevation.

Approach

We will hold a forum for parties interested in developing a desktop rating system for flood insurance policies. The purpose of the meeting is to exchange ideas on the best strategy to achieve our goals for a desktop rating system and to discuss alternatives for overcoming the difficulties and high cost of implementing such a system. The government does not require a desktop rating system; we are simply seeking industry input on the best strategy to develop such a system. Our vision is that the forum will attract entrepreneurial energies and disparate skills and communities of interest that were perhaps previously unaware of the difficulties associated with rating a flood insurance policy.

We will hold the forum on Wednesday, December 13 from 9:00 a.m. to 3:00 p.m in the Horizon Ballroom of the International Trade Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC 20004. We invite all interested parties to present their ideas for developing a desktop system that supports the actuarial rating of a flood insurance policy and the floodplain management requirements of the NFIP. We have several key questions that we invite the attendees to address. The list is not exhaustive and we welcome additional questions for consideration.

• What is the degree of accuracy of current building elevation information?

• What existing databases can we apply to the flood rating process?

• Is there an easy way to translate highest adjacent grade and lowest adjacent grade data into lowest floor elevation?

• How well will elevation data collected using LIDAR or similar technologies meet the needs of local floodplain managers in enforcing NFIP regulations?

• Is there a market beyond the NFIP for data that would be part of a desktop rating system?

• What technologies for collecting and disseminating data are available for application to this problem?

• What are practical alternatives for distributing a desktop rating system?

We must receive the text of your statement no later than November 27, 2000, so that we can make copies available to all participants and we may ask you to discuss portions of your statement at the forum. With your permission, we may post your statement on our website for other persons who may be interested in this challenge but who would like more information.

If you wish to participate in the Desktop Rating of Flood Insurance Policies Forum, please reply by e-mail to *edward.pasterick@fema.gov.* You may attend without submitting a written response. Please let us know who from your organization will attend and the questions that they will address. If you have any questions, please email or call Edward Pasterick at 202–646–3443. We look forward to your involvement in

[2] A Pre-FIRM structure is a structure built before the issuance of a FIRM or before 1975, whichever is later. Structures built after a FIRM is issued are Post-FIRM. All Post-FIRM structures and Pre-FIRM structures electing an elevation rate must provide an elevation certificate. Pre-FIRM structures that are not elevation rated do not have to submit an elevation certificate, nor do structures outside the SFHA.

this effort and encourage your participation.

Jo Ann Howard,

Administrator, Federal Insurance Administration.

[FR Doc. 00–27638 Filed 10–26–00; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY:

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR part 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before December 26, 2000.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M–P–500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Mary M. West, Chief, Financial Reports Section (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, (202–452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision of the following reports:

1. *Report title:* Domestic Branch Notification.

Agency form number: FR 4001.

OMB control number: 7100–0097.

Frequency: On occasion.

Reporters: State member banks.

Annual reporting hours: 156 hours.

Estimated average hours per response: 30 minutes for expedited notifications; 1 hour for nonexpedited notifications.

Number of respondents: 169 expedited; 71 nonexpedited. Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 321) and is not given confidential treatment.

Abstract: The Federal Reserve System requires a state member bank to file a notification whenever it proposes to establish a domestic branch. There is no formal reporting form; banks notify the Federal Reserve by letter prior to making the proposed investment. The Federal Reserve uses the information to fulfill its statutory obligation to supervise state member banks.

2. *Report title:* Investment in Bank Premises Notification.

Agency form number: FR 4014.

OMB control number: 7100–0139.

Frequency: On occasion.

Reporters: State member banks.

Annual reporting hours: 3 hours.

Estimated average hours per response: 30 minutes.

Number of respondents: 5.

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 371d) and is not given confidential treatment.

Abstract: The Federal Reserve System requires a state member bank to file a notification whenever it proposes to make an investment in bank premises that results in its total bank premises investment exceeding its capital stock and surplus or, if the bank is well capitalized and in good condition, exceeding 150 percent of its capital stock and surplus. There is no formal reporting form; banks notify the Federal Reserve by letter fifteen days prior to making the proposed investment. The Federal Reserve uses the information to fulfill its statutory obligation to supervise state member banks.

3. *Report title:* The Daily Report of Dealer Activity in Treasury Financing.

Agency form number: FR 2004WI.

OMB control number: 7100–0003.

Frequency: Daily.

Reporters: Primary dealers in the U.S. government securities market.

Annual reporting hours: 4,640 hours.

Estimated average hours per response: 1 hour.

Number of respondents: 29 dealers.

Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. 248 (a)(2), 353–359, and 461(c)). Completing the FR 2004 reports by nondepository institutions is not a mandatory obligation, and it may be deemed to be voluntary; however, it is required to be completed by those nondepository institution dealers who desire to be primary dealers. Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: The FR 2004WI collects daily information on a next-business-day basis on positions in to-be-issued Treasury coupon securities, mainly the trading on a when-issued delivery basis.

4. *Report title:* Semiannual Report of Derivatives Activity.

Agency form number: FR 2436.

OMB control number: 7100–0286.

Frequency: Semiannual.

Reporters: large U.S. dealers of over-the-counter (OTC) derivatives.

Annual reporting hours: 1,800 hours.

Estimated average hours per response: 100.

Number of respondents: 9.

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 248 (a), 353–359, and 461) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The FR 2436 collects derivatives market statistics from a sample of nine large U.S. dealers of over-the-counter (OTC) derivatives. Data are collected on notional amounts and gross market values of the volumes of broad categories of foreign exchange, interest rate, equity- and commodity-linked OTC derivatives instruments across a range of underlying currencies, interest rates, and equity markets.

This collection of information complements the ongoing triennial Survey of Foreign Exchange and Derivatives Market Activity (FR 3036). The FR 2436 collects similar data on the outstanding volume of derivatives, but not on derivatives turnover. As with the FR 3036, the Federal Reserve conducts this report in coordination with other central banks and forwards the aggregated data furnished by U.S. reporters to the Bank of International Settlements (BIS), which publishes global market statistics that are aggregations of national data.

5. *Report title:* Reports Related to Securities Issued by State Member Banks as Required by Regulation H.

Agency form number: Reg H–1.

OMB control number: 7100–0091.

Frequency: On occasion.

Reporters: State member banks.

Annual reporting hours: 2,085 hours.

Estimated average hours per response: 5.11.

Number of respondents: 24.

Small businesses are not affected.

General description of report: This information collection is mandatory (15 U.S.C. 781(i)) and is not given confidential treatment.

Abstract: The Federal Reserve's Regulation H requires certain state member banks to submit information relating to their securities to the Board of Governors of the Federal Reserve System on the same forms that bank holding companies and nonbank entities use to submit similar information to the Securities and Exchange Commission (SEC). The information is primarily used for public disclosure and is available to the public upon request.

Proposal to approve under OMB delegated authority the extension for three years, with revision of the following reports:

1. *Report title:* The Government Securities Dealers Reports: The Weekly Report of Dealer Positions (FR 2004A), The Weekly Report of Cumulative Dealer Transactions (FR 2004B), The Weekly Report of Dealer Financing and Fails (FR 2004C), and The Weekly Report of Specific Issues (FR 2004SI).

Agency form number: FR 2004.

OMB control number: 7100–0003.

Frequency: Weekly.

Reporters: Primary dealers in the U.S. government securities market.

Annual reporting hours: 14,239 hours.

Estimated average hours per response: FR 2004A, 1.5 hours; FR 2004B, 2 hours; FR 2004 C 1.5 hours; FR 2004SI, 3 hours.

Number of respondents: 29 dealers.

Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. 248 (a)(2), 353–359, and 461(c)). Completing the FR 2004 reports by nondepository institutions is not a mandatory obligation, and it may be deemed to be voluntary; however, it is required to be completed by those nondepository institution dealers who desire to be primary dealers. Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: The FR 2004A collects data as of Wednesday of each week on dealers' outright positions in Treasury and other marketable debt securities as well as their positions in futures and options on underlying marketable debt securities. The FR 2004B collects data cumulated for the week ended Wednesday on the volume of transactions made by dealers in the same instruments for which positions are reported on the FR 2004A. The FR 2004C collects data as of Wednesday of each week on the amounts of dealer financing and fails. The FR 2004SI collects data as of Wednesday of each week on outright, financing, options, and fails positions in current or on-the-run issues. Under certain circumstances FR 2004SI data can also be collected on a daily basis for on-the-run and off-the-run securities.

Current actions: The staff proposes several revisions to the reports to address changes in the market conditions. Futures and options data are being deleted from the FR 2004A, B, and SI because few dealers report much activity in this area and these data have proved to be of limited use in market surveillance. Items are being added to the FR 2004A and B to gain a better picture of the corporate securities markets. Items are being consolidated on the FR 2004C because the transactions categories currently reported have not provided significant insight into the functioning of funding markets and, therefore, add reporting burden without adequate benefit. The revised reporting forms would be implemented as of July 4, 2001, and would impose 22 percent less burden on respondents.

Board of Governors of the Federal Reserve System, October 23, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–27604 Filed 10–26–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 13, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. James L. Pitrolo, Jr., John B. Pitrolo, Janice M. Cota, and Joyce E. Keefover; all of Mannington, West Virginia; to acquire additional voting shares of Heritage Bancshares, Inc., Mannington, West Virginia, and thereby indirectly acquire additional voting shares of First Exchange Bank, Mannington, West Virginia.

Board of Governors of the Federal Reserve System, October 24, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–27676 Filed 10–26–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 20, 2000.

A. FEDERAL RESERVE BANK OF DALLAS (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. OSB Delaware Financial Services, Inc., Dover, Delaware, and OSB Financial Services, Inc., Orange, Texas; to become bank holding companies by acquiring 100 percent of the voting shares of Orange Savings Bank, SSB, Orange, Texas.

2. Southwest Bancorporation of Texas, Inc., Houston, Texas, and Southwest Holding Delaware, Wilmington, Delaware; to merge with Citizens Bankers, Inc., Baytown, Texas, and Citizens Bankers of Delaware, Inc., Wilmington, Delaware, and thereby indirectly acquire voting shares of Citizens Bank and Trust Company of Baytown, Texas, Baytown, Texas; Baytown State Bank, Baytown, Texas; Pasadena State Bank, Pasadena, Texas; and First National Bank of Bay City, Bay City, Texas.

Board of Governors of the Federal Reserve System, October 23, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–27606 Filed 10–26–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 24, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Mid-Iowa BancShares, Co., Algona, Iowa; to merge with Ruthven Investment, Ltd., Ruthven, Iowa, and thereby indirectly acquire voting shares of Ruthven State Bank, Ruthven, Iowa.

2. First Bancorp of Taylorville, Inc., Taylorville, Illinois; to acquire 100 percent of the voting shares of The First National Bank of Mt. Auburn, Mt. Auburn, Illinois.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Humboldt Bancorp, Eureka, California; to merge with Tehama Bancorp, Red Bluff, California, and thereby indirectly acquire voting shares of Tehama Bank, Red Bluff, California.

2. New Corporation, Oakland, California; to become a bank holding company by acquiring 100 percent of the voting shares of Met Financial Corporation, Oakland, California, and thereby indirectly acquire voting shares of Metropolitan Bank, Oakland, California.

3. UFJ Holdings, Inc. (in formation), Osaka, Japan; to become a bank holding company by acquiring 100 percent of the voting shares of The Sanwa Bank, Limited, Osaka, Japan, and thereby indirectly acquire Sanwa Bank California, San Francisco, California, and The Tokai Bank, Limited, Nagoya, Japan, and thereby acquire Tokai Bank of California, Los Angeles, California.

In connection with this application, Applicant also has applied to acquire Sanwa Financial Products Co., L.L.C, New York, New York, and thereby engage in derivative product transactions as an originator and as a principal, pursuant to § 225.28(b)(7) of Regulation Y; and thereby indirectly acquire Sanwa Futures, L.L.C, Chicago, Illinois, and thereby engage in the execution and clearance, on various futures exchanges, of futures and options contracts, pursuant to § 225.28(b)(7) of Regulation Y; Sanwa Universal Securities Co., L.L.C., New York, New York, and thereby engage in broker dealer activities and to a limited

extent, in underwriting and dealing activities, pursuant to § 225.28(b)(7) of Regulation Y; Toyo Trust Company of New York, New York, New York, and thereby engage in trust company activities, pursuant to § 225.28(b)(5) of Regulation Y.

Board of Governors of the Federal Reserve System, October 24, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–27675 Filed 10–26–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 9, 2000.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Humboldt Bancorp, Eureka, California; to acquire Bancorp Financial Services, Inc., Sacramento, California, and thereby engage in leasing activities, pursuant to § 225.28(b)(5) of Regulation Y.

Board of Governors of the Federal Reserve System, October 23, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–27605 Filed 10–26–00; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Office of Communications Cancellation of Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Because of low usage the Department of Treasury is cancelling the following Standard Form:

SF 210, Signature/Designation Card for Certifying Officer.

DATES: Effective upon publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: September 26, 2000.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 00–27652 Filed 10–26–00; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01012]

Prevention Education and Access to Care Services for Persons Infected and Affected by HIV; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program for prevention education and access to care services for persons infected and affected by HIV. This program addresses the ''Healthy People 2010'' focus area of Human Immunodeficiency Virus Infection (HIV). For the conference copy of ''Healthy People 2010'' visit the internet site: <http://www.health.gov/healthypeople> The purpose of this program is to support the establishment of a national program to (1) provide education and prevention programs for persons infected with HIV to reduce risk for transmitting HIV and facilitate access to care services; and (2) provide technical assistance to other CDC grantees to enhance their capacity to serve persons living with HIV and involve them in HIV prevention programs and planning efforts. Emphasis should be placed on providing assistance to grantees funded directly by CDC. Other HIV service providers can be provided assistance only if resources are sufficient for expanded services.

B. Eligible Applicants

Assistance will be provided only to national (organizations that conduct HIV prevention programs nationwide) non-profit organizations that meet the following criteria:

1. Have a valid tax-exempt status under Section 501(c)(3), as evidenced by an Internal Revenue Service (IRS) determination letter.

2. Have established policies and a documented record for at least three years of providing HIV prevention technical assistance and education nationally, serving as a national prevention and education resource, and facilitating access to care services for all people infected by HIV/AIDS.

3. More than 50% of the board of directors OR key staff (key management, supervisory, administrative positions such as executive, program, and fiscal director positions and key service provision positions) should be comprised of HIV infected people. Provide evidence of meeting this criteria by providing a description of your board composition and signing the enclosed certification. The certification must be signed by the board Chairperson or the Executive Director/CEO.

4. At least 50% of the organization's resources over the last three years must have been spent on HIV services for HIV infected persons. Submit a list of all funding (including in-kind resources) received in the last three years and identify the resources used to conduct activities targeting HIV infected persons. This information is subject to review and verification.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $465,000 is available in FY 2001 to fund one award. It is expected that the award will begin on or about February 28, 2001 and will be made for a 12-month budget period

within a project period of up to 5 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting the activities to achieve the purpose of the program, the recipient will be responsible for the activities listed under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Develop national strategies and policies to achieve the purposes of this program through collaboration with constituents; State and local health departments; State and local education agencies; nongovernmental partners; and CDC.

b. Implement specific, measurable, and feasible goals and objectives.

c. Evaluate the effectiveness of the program in achieving the goals and objectives.

d. Implement an operational plan that includes the following activities:

(1) Disseminate current, accurate HIV/AIDS prevention education, information, and referrals to persons living with HIV infection, their service providers, other CDC grantees (State and local health departments, State and local education agencies, nongovernmental organizations), the public, and the broadcast media. Electronic communications should be used as an important means to provide such information.

(2) Collaborate with CDC grantees and other HIV service providers to reach persons and communities most affected by HIV/AIDS, particularly communities of color, and encourage them to learn their HIV status.

(3) Provide programmatic technical assistance to CDC grantees on effective HIV prevention strategies for persons living with HIV, including how to involve them in HIV prevention efforts. Other HIV service providers can be provided assistance only if resources are sufficient for expanded services.

(4) Strengthen the capacity of CDC grantees through technical assistance and training to support and involve persons living with HIV in planning and implementing HIV prevention activities and in HIV prevention community planning activities.

(5) Where local capacity is lacking, provide leadership development training to persons living with HIV/AIDS, including young people, to support their involvement in planning and implementing HIV prevention activities and in HIV prevention community planning efforts to ensure the parity, inclusion, and representation of persons with HIV disease throughout the community planning process.

2. CDC Activities

a. Provide and periodically update information related to the purposes or activities of this program announcement.

b. Facilitate collaboration with other CDC grantees in planning and conducting national strategies designed to strengthen programs for preventing HIV infection.

c. Provide programmatic consultation and guidance related to program planning, implementation, and evaluation; assessment of program objectives; and dissemination of successful strategies, experiences, and evaluation reports.

E. Application Content

Use the information in the Program Requirements, Other Requirements and Evaluation Criteria sections to develop your application content. Your application will be evaluated on the criteria listed, so it is important to follow the evaluation criteria closely in laying out your program plan. The narrative should be no more than 35 double-spaced pages, printed on one side, with one inch margins, and 12-point font. Please adhere to the following page limits for each section of your narrative:

1. Background and Need—Not more than 3 pages
2. Capacity—Not more than 3 pages
3. Operational Plan—Not more than 15 pages
4. Project Management and Staffing Plan—Not more than 8 pages.
5. Collaborating—Not more than 2 pages.
6. Evaluation—Not more than 4 pages.
7. Budget.
8. Other Funding Sources.

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available at the following Internet address: www.cdc.gov/ * * * Forms, or in the application kit. On or before December 22, 2000, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement. Deadline: Applications shall be considered as meeting the deadline if it is either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicant must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

G. Evaluation Criteria

Your application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Justification of Need (15 points)

a. Need. The degree to which the applicant describes the need for the proposed activities.

b. Background and Experience. The degree to which the applicant describes it's organization's background, provides evidence of policies developed and experience in addressing identified needs and providing services for people infected by HIV/AIDS for the past three years.

2. Capacity (20 points)

a. Ability. The degree to which the applicant describes the organization's ability to: (1) Deliver effective HIV prevention messages to HIV positive communities nationwide. (2) Provide national technical assistance and training to constituents that relate to HIV prevention, and education programs and services that will enhance their ability to serve persons living with HIV and involve them in HIV prevention programs and planning efforts. (3) Identify and train HIV positive Community Planning Group (CPG) members to serve and be productive members of state/local CPGs.

b. Coordination. The degree to which the applicant describes the organization's planned coordination with other CDC grantees (nongovernmental organizations, State and local health departments, community planning groups, and education agencies,) and other national and community level HIV prevention partners; provides documentation demonstrating that activities will be conducted nationally; and that the organization has experience addressing the needs of ALL communities living with HIV/AIDS nationwide.

c. Communication. The degree to which the applicant describes the organization's ability to communicate information related to the needs of people living with HIV/AIDS to ALL

communities affected by HIV/AIDS in the U.S.

d. Organizational Structure. The degree to which applicant's organizational chart describes the organization's structure and how that structure supports its ability to provide education and prevention activities for the HIV positive communities nationally.

e. Scope of activities. The degree to which the applicant describes and documents the organization's capacity to conduct activities nationally that addresses the needs of HIV positive people and their relationship to all communities affected by HIV/AIDS.

3. Operational Plan (25 points)

The extent to which the applicant:

a. Goals. Describes goals that relate to the program requirements and indicate where the program will be at the end of the projected 5 year project period.

b. Objectives. Describes objectives that are specific, measurable, and feasible to be accomplished during the 12-month budget period. Relate the objectives directly to the project goals and recipient activities.

c. Activities. Describes in narrative form and displays on a detailed timetable, specific activities for the one year budget period that are related to each objective, address each recipient activity, and target the populations most affected by HIV/AIDS. The extent to which the applicant indicates when each activity will occur, when preparations for activities will occur, who will be responsible for each activity, and identifies staff who will work on each activity.

4. Project Management and Staffing Plan (15 points)

a. Staffing. The extent to which the applicant describes the proposed staffing for the project and provides job descriptions for existing and proposed positions.

b. Curriculum vitae. Does the applicant include curriculum vitae (limit to two pages per person) for each professional staff member named in the proposal?

c. Other organizations. If other organizations will participate in the proposed activities, does the applicant provide the names of the organizations and the staff person with the applicant's organization who will coordinate the activity or supervise the other staff. For each organization listed, does the applicant provide a letter identifying the specific activity and the capacity of the assisting organization or subcontractor, and their role in carrying out the proposed activity.

5. Collaborating Plan (10 points)

The extent to which the applicant describes the types of proposed collaboration and the agencies and organizations with whom collaboration will be conducted. Examples of such activities include planning joint conferences, participating in conferences or workshops of other CDC grantees, participating in a national coordinating committee.

6. Evaluation Plan (15 points)

The extent to which the applicant describes the methods for evaluating the project objectives, the implementation of the plan of operation, and how the quality of services will be ensured. The extent to which the applicant focuses on process evaluation and quality assurance; specifies the evaluation question to be answered, data to be obtained, the type of analyses, to whom it will be reported, and how data will be used to improve the program.

7. Budget (Not scored)

The extent to which the applicant provides a line item budget with written justification to support the request for assistance, consistent with the purpose and objectives of the project.

Other Funding Sources

The extent to which the applicant indicates their contribution, if any and describes funding from other sources.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. progress reports semiannually.
2. financial status report, no more than 90 days after the end of the budget period.
3. final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–5 HIV Program Review Panel Requirements
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301 and 317(k)(2), of the Public Health Service Act [42 U.S.C. 241 and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.941.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov Click on ''Funding'' then ''Grants and Cooperative Agreements.''

To receive additional written information and request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sharon Robertson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number (770) 488–2782, Email address: sqr2@cdc.gov.

For program technical assistance, contact: Sam Taveras, Team Leader, Community Assistance, Planning, and National Partnerships Branch, Division of HIV/AIDS Prevention, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, Mailstop E–58, Atlanta, GA 30333, Telephone 404–639–0965, Email SYT2@cdc.gov.

October 20, 2000.

Sandra R. Manning,

Acting Director, Procurement and Grants Office, Center for Disease Control And Prevention.

[FR Doc. 00–27504 Filed 10–26–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1513]

Guidance for Industry on Bioavailability and Bioequivalence Studies for Orally Administered Drug Products—General Considerations; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Bioavailability and Bioequivalence Studies for Orally Administered Drug Products—General Considerations.'' This guidance provides recommendations to sponsors and applicants intending to submit bioavailability (BA) and/or bioequivalence (BE) information on investigational new drug applications (IND's), new drug applications (NDA's), abbreviated new drug applications (ANDA's), and their supplements, to the Center for Drug Evaluation and Research (CDER). This guidance provides general information on how to comply with the BA and BE requirements for orally administered dosage forms under the bioavailability and bioequivalence requirements regulations. It is one of a set of planned core guidances designed to reduce or eliminate the need for FDA drug-specific guidances.

DATES: Submit written comments on agency guidances at any time.

ADDRESSES: Copies of this guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm. Submit written requests for single copies of ''Bioavailability and Bioequivalence Studies for Orally Administered Drug Products—General Considerations'' to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mei-Ling Chen, Center for Drug Evaluation and Research (HFD–350), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5688.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Bioavailability and Bioequivalence Studies for Orally Administered Drug Products—General Considerations.'' This guidance provides recommendations to sponsors and applicants intending to provide BA and BE information in IND's, NDA's, ANDA's, and their supplements that complies with the BA and BE requirements in part 320 (21 CFR part 320) as it applies to dosage forms intended for oral administration.

In September 1999, FDA announced the availability of a draft guidance entitled ''BA and BE Studies for Orally Administered Drug Products—General Considerations'' (64 FR 48409, September 3, 1999). When the draft guidance was published, FDA requested comments on the use of the new criteria. A total of 16 public comments were received. Most of these comments were supportive of the recommendations in the draft guidance, but FDA received a number of comments that expressed concern about the use of the individual BE criterion.

The public comments fell into four general categories as follows: (1) Comments on the justification for an individual BE criterion (absence of documentation of public health risk, absence of evidence that subject-by-formulation interaction is clinically relevant); (2) comments on the burden of conducting replicate study designs (recruitment costs, institutional review board approval, capacity constraints, study delays, increased monitoring for adverse drug reactions, subject dropouts, increased drug exposure, and increased volume of blood collected); (3) comments on statistical issues (aggregate versus disaggregate criterion, discontinuity, and mean/variance trade-off); and (4) miscellaneous comments (experimental aspects of 2-year period recommended in the notice, absence of community consensus, barriers to international harmonization and globalization).

II. Discussion

Many aspects of this guidance represent departures from past practices used to document BE. The general intent of many of these changes is to reduce the regulatory burden while maintaining sound scientific principles consistent with public health objectives. Examples of ways these changes might reduce the regulatory burden include: (1) Enabling biowaivers (i.e., waivers of in vivo BE studies) for lower strengths of modified-release dosage forms; (2) eliminating multiple dose BE studies for modified-release dosage forms; (3) enabling biowavers for higher strengths of immediate-release dosage forms; and (4) reducing emphasis on measuring metabolites in BE studies.

FDA acknowledges the public concerns about the use of the individual criterion for BE studies. These concerns were also considered in a meeting of the Advisory Committee for Pharmaceutical Science on September 23, 1999 (September 23 meeting). The committee concluded that replicate study designs should be recommended for modified release drug products and should be strongly encouraged for other drug products, subject to certain exceptions.

In finalizing the guidance, FDA has followed the advisory committee's recommendations. FDA believes that replicate study designs offer significant advantages compared to nonreplicate designs. Replicate study designs: (1) Allow comparison of within-subject variances for the test and reference products; (2) indicate whether a test product exhibits higher or lower within-subject variability in the BA measures when compared to the reference product; (3) suggest whether a subject-by-formulation interaction may be present; (4) provide more information about factors underlying formulation performance; and (5) reduce the number of subjects needed in the BE study.

In accordance with the advisory committee's recommendation, FDA recommends in the guidance the use of an average BE criterion for both replicate and nonreplicate studies. A further committee conclusion in the September 23 meeting was that an individual BE criterion can be used to allow market access of drug products in compelling circumstances. For this reason, the guidance states that sponsors have the option to choose an individual criterion for highly variable drugs. The use of an individual criterion with reference-scaling in this circumstance can permit a further reduction in the number of subjects in BE studies. Reduction in the number of subjects in BE studies of highly variable drugs is in keeping with the basic regulatory principle that no unnecessary human research should be done (§ 320.25(a)(1)).

By continuing to recommend the use of the average BE criterion in most circumstances, the agency has addressed many of the public comments expressing concern about the use of the individual BE criterion. To avoid a large test and reference difference, constraint on the allowable difference has been recommended in this guidance. Use of the individual BE criterion for highly

variable drugs is expected to occur rarely. In these instances, FDA believes that all relevant statistical issues have been sufficiently resolved and that no important public health risk will arise if the criterion is used to allow market access.

This guidance replaces the following guidances: (1) ''Guidelines for the Evaluation of Controlled Release Drug Products'' (April 1984); (2) ''Oral Extended (Controlled) Release Dosage Form: In Vivo Bioequivalence and In Vitro Dissolution Testing'' (September 1993); (3) ''Statistical Procedures for Bioequivalence Studies Using a Standard Two-Treatment Crossover Design'' (July 1992); (4) the preliminary draft guidance on ''In Vivo Bioequivalence Studies Based on Population and Individual Bioequivalence Approaches'' (October 1997), and (5) the draft guidance on ''BA and BE Studies for Orally Administered Drug Products—General Considerations.'' This guidance supersedes any prior guidance, or any relevant part of a prior guidance issued to assist sponsors in meeting the requirements in part 320.

This level 1 guidance is being issued consistent with FDA's good guidance practices (65 FR 56468, September 19, 2000). This guidance document represents the agency's current thinking on BA and BE studies for orally administered drug products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such an approach satisfies the requirements of the applicable statutes and regulations.

Interested persons may submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 19, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–27602 Filed 10–26–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–67]

Notice of Submission of Proposed Information Collection to OMB; Uniform Physical Standards and Physical Inspection Requirements for Certain HUD Housing, Administrative Process for Assessment of Insured and Assisted Properties

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 27, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0369) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Uniform Physical Standards and Physical Inspection Requirements for Certain HUD Housing, Administrative Process for Assessment of Insured and Assisted Properties.

OMB Approval Number: 2502–0369.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: The uniform physical condition standards are intended to ensure that HUD program participants carry out their legal obligations to maintain HUD properties in a condition that is decent, safe, sanitary, and in good repairs.

Respondents: Business or Other For-Profit.

Frequency of Submission: Annually.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
7,100		1		9		153,900

Total Estimated Burden Hours: 153,900.

Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 20, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–27608 Filed 10–26–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–68]

Notice of Submission of Proposed Information Collection to OMB; 2000 Survey of Homeless Residential Service Providers

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 27, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: 2000 Survey of Homeless Residential Service Providers.

OMB Approval Number: 2502–XXXX.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: The 2000 Survey of Homeless Residential Service Providers will provide information about the current operation of programs assisting homeless persons in 16 jurisdictions in order to improve HUD's ability to assess the success of homeless service programs and grantees

Frequency of Submission: One-time.

Reporting Burden:

	Number of respondents	×	Freqency of response	×	Hours per response	=	
Reporting Burden	900		1		1		900

Total Estimated Burden Hours: 900.

Status: New.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 20, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–27609 Filed 10–26–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–69]

Notice of Submission of Proposed Information Collection to OMB; Multifamily Default Status

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 27, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0041) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of

response; and hours of responses; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Multifamily Default Status.

OMB Approval Number: 2502–0041.

Form Numbers: HUD–92426.

Description of the Need for the Information and Its Proposed Use: Mortgagees use this report to notify HUD that a project owner has defaulted and that an assignment of acquisition will result if HUD and the mortgagor do not develop a plan for reinstating the loan.

Respondents: Not-For-Profit Institutions, Federal Government.

Frequency of Submission: On Occasion.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting Burden	387		5		0.166		322

Total Estimated Burden Hours: 322.

Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 20, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–27610 Filed 10–26–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–43]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *COE:* Ms. Shirley Middleswarth, Army Corps of Engineers, Management & Disposal Division, 441 G Street, Washington, DC 20314–1000; (202) 761–7425; *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; *Interior:* Ms. Linda Tribby, Department of the Interior, 1849 C Street, NW., Mail Stop 5512–MIB, Washington, DC 20240; (202) 219–0728; *NAVY:* Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–

5065; (202) 685–9200; (These are not toll-free numbers).

Dated: October 20, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 10/27/00

Suitable/Available Properties

Buildings (by State)

Kentucky

Comfort Station
Carr Creek Lake Proj.
Carr Creek Lake Co: KY 00000–
Landholding Agency: COE
Property Number: 31200030004
Status: Unutilized
Comment: 782 sq. ft., concrete block, off-site use only.

Massachusetts

Storage Bldg.
Knightville Dam Road
Huntington Co: Hampshire MA 01050–
Landholding Agency: COE
Property Number: 31200030005
Status: Unutilized
Comment: 480 sq. ft., needs rehab, off-site use only.

North Dakota

Proj. Office
Lake Ashtabula
2630 114th Ave.
Valley City Co: Barnes ND 58072–9795
Landholding Agency: COE
Property Number: 31200030006
Status: Unutilized
Comment: 1272 sq. ft., needs rehab, off-site use only.

Washington

Hood Park Residence
Ice Harbor Dr.
Burbank Co: Walla Walla WA 99323–
Landholding Agency: COE
Property Number: 31200030008
Status: Unutilized
Comment: 1100 sq. ft. mobile home, off-site use only.

Fishhook Park Residence
Ice Harbor
Prescott Co: Walla Walla WA 99323–
Landholding Agency: COE
Property Number: 31200030009
Status: Unutilized
Comment: mobile home, off-site use only.

Charbonneau Park Residence
Ice Harbor
Burbank Co: Walla Walla WA 99323–
Landholding Agency: COE
Property Number: 31200030010
Status: Unutilized
Comment: 1344 sq. ft. mobile home, off-site use only.

Levey Park Residence
Ice Harbor
Pasco Co: Franklin WA 00000–
Landholding Agency: COE
Property Number: 31200030011
Status: Unutilized
Comment: 924 sq. ft. mobile home, off-site use only.

Land (by State)

Arkansas

7 acres
Army Reserve
Installation 05572
West Memphis Co: Crittenden AR 72301–
Landholding Agency: GSA
Property Number: 54200040003
Status: Surplus
Comment: 7 acres, subject to existing easements; GSA Number: 7–D–AR–0557.

Nebraska

0.34 acres
Offutt AFB
adjacent to 36th St.
Bellevue Co: Sarpy NE 68113–
Landholding Agency: GSA
Property Number: 54200040002
Status: Surplus
Comment: 0.34 acres, subject to existing easements; GSA Number: 7–D–NE–0527.

Suitable/Unavailable Properties

Buildings (by State)

Pennsylvania

Env. Learning Ctr.
Rt. 66/Crooked Creek Dam
Ford City Co: Armstrong PA 16226–
Landholding Agency: COE
Property Number: 31200030007
Status: Underutilized
Comment: 4576 sq. ft., needs rehab.

Unsuitable Properties

Buildings (by State)

Arizona

Bldg. 958
Marine Corps Air Station
Yuma Co: AZ 85369–
Landholding Agency: Navy
Property Number: 77200040001
Status: Excess
Reason: Extensive deterioration.

Bldg. 1216
Marine Corps Air Station
Yuma Co: AZ 85369–
Landholding Agency: Navy
Property Number: 77200040002
Status: Excess
Reason: Extensive deterioration.

Bldg. 676
Marine Corps Air Station
Yuma Co: AZ 85369–
Landholding Agency: Navy
Property Number: 77200040003
Status: Excess
Reason: Extensive deterioration.

California

Bldg. OT33
Old Town Campus
Naval Space & Warfare Systems
San Diego Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200040004
Status: Unutilized
Reason: Extensive deterioration.

Bldg. OT–5
Old Town Campus
Naval Space & Warfare Systems
San Diego Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200040005
Status: Unutilized
Reason: Extensive deterioration.

Florida

Bldg. 114
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Landholding Agency: Navy
Property Number: 77200040006
Status: Underutilized
Reasons: Within airport runway clear zone; Secured Area.

Bldg. 133
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Landholding Agency: Navy
Property Number: 77200040007
Status: Underutilized
Reasons: Within airport runway clear zone; Secured Area.

Bldg. 141
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Landholding Agency: Navy
Property Number: 77200040008
Status: Underutilized
Reasons: Within airport runway clear zone; Secured Area.

16 Bldgs.
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Location: 142, 151, 153, 156, 164, 170, 171, 176, 178, 180, 182–187
Landholding Agency: Navy
Property Number: 77200040009
Status: Underutilized
Reasons: Within airport runway clear zone; Secured Area.

11 Bldgs.
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Location: 103, 105, 112, 113, 115–119, 121, 122
Landholding Agency: Navy
Property Number: 77200040010
Status: Underutilized
Reasons: Within airport runway clear zone; Secured Area.

23 Bldgs.
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Location: 143–150, 152, 154, 155, 157, 158, 160–163, 165, 166, 168, 169, 179, 181
Landholding Agency: Navy
Property Number: 77200040011
Status: Underutilized
Reasons: Within airport runway clear zone; Secured Area.

5 Bldgs.
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Location: 173, 174, 175, 177, 188
Landholding Agency: Navy
Property Number: 77200040012
Status: Underutilized
Reasons: Within airport runway clear zone; Secured Area.

6 Bldgs.

Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Location: 130–132, 134–136
Landholding Agency: Navy
Property Number: 77200040013
Status: Underutilized
Reasons: Within airport runway clear zone; Secured Area.

Bldgs. 159, 167, 172
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Landholding Agency: Navy
Property Number: 77200040014
Status: Underutilized
Reasons: Within airport runway clear zone; Secured Area.

5 Bldgs.
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Location: 124, 127, 138–140
Landholding Agency: Navy
Property Number: 77200040015
Status: Underutilized
Reasons: Within airport runway clear zone; Secured Area.

5 Bldgs.
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Location: 107, 109, 111, 120, 123
Landholding Agency: Navy
Property Number: 77200040016
Status: Underutilized
Reasons: Within airport runway clear zone; Secured Area.

5 Bldgs.
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Location: 102, 104, 106, 108, 110
Landholding Agency: Navy
Property Number: 77200040017
Status: Underutilized
Reasons: Within airport runway clear zone; Secured Area.

Bldg. 36
Naval Station
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number: 77200040021
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 348
Naval Station
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number: 77200040022
Status: Unutilized
Reason: Extensive deterioration.

Michigan

Stroh Army Reserve Center
17825 Sherwood Ave.
Detroit Co: Wayne MI 0000–
Landholding Agency: GSA
Property Number: 54200040001
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material; GSA Number: 1–D–MI–798.

Virginia

Bldg. 2185
Marine Corps Base
Quantico Co: VA 00000–
Landholding Agency: Navy
Property Number: 77200040018
Status: Excess
Reason: Extensive deterioration.

Washington

Fire Barn/Rigger & Loft
Grand Coulee Dam
Grand Coulee Co: Grant WA 99133–
Landholding Agency: Interior
Property Number: 61200040001
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 482
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77200040019
Status: Excess
Reason: Secured Area.

Bldg. 529
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77200040020
Status: Excess
Reason: Secured Area.

Land (by State)

District of Columbia

Square 62
2216 C St., NW
Washington Co: DC 20037–
Landholding Agency: GSA
Property Number: 54200040004
Status: Excess
Reason: contamination; GSA Number: 4–G–DC–0478.

[FR Doc. 00–27471 Filed 10–26–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4513–N–05]

Credit Watch Termination Initiative

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Origination Approval Agreements taken by HUD's Federal Housing Administration against HUD-approved mortgagees through its Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements (Agreements) terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh St. SW, Room B133–P3214, Washington, DC 20410; telephone (202) 708–2830 (This is not a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in the HUD mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 (64 FR 26769), HUD published a notice on its procedures for terminating origination approval agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999 notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees which have had their Origination Approval Agreements terminated.

Termination of Origination Approval Agreement

Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Agreement between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single family mortgage loans and submit them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The Termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Cause

HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the fourth review period, HUD is only terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 300 percent of the field office rate.

Effect

Termination of the Agreement precludes that branch(s) of the mortgagee from originating FHA-insured single family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA insured mortgages may continue to do so.

Loans that closed or were approved before the Termination became effective may be submitted for insurance

endorsement. Approved loans are (1) those already underwritten and approved by a Direct Endorsement (DE) underwriter employed by an unconditionally approved DE lender and (2) cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another mortgagee or branch authorized to originate FHA insured mortgages in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for a new Origination Approval Agreement if the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.8 or 202.10 and 202.12, if there has been no Origination Approval Agreement for at least six months, and if the Secretary determines that the underlying causes for termination have been remedied. To enable the Secretary to ascertain whether the underlying causes for termination have been remedied, a mortgagee applying for a new Origination Approval Agreement must obtain an independent review of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The review must be conducted and issued by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as set forth by the General Accounting Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, S.W., Room B133–P3214, Washington, DC 20410 or by courier to 490 L'Enfant Plaza, East, S.W., Suite 3214, Washington, DC 20024.

Action: The following mortgagees have had their Agreements terminated by HUD:

Mortgagee name	Mortgagee branch address	HUD office jurisdictions	Termination effective date	Home ownership centers
Adana Mortgage Bankers	400 Perimeter Ctr Ter, Ste 170, Atlanta, GA 30346.	Atlanta, GA	08/03/2000	Atlanta.
Florida Capital Mortgage Company	228 A Palm Coast Pkwy NE, Palm Coast, FL 32137.	Orlando, FL	06/04/2000	Atlanta.
Irwin Mortgage Corporation	808 Moorefield Park Dr, Ste 113, Richmond, VA 23236.	Richmond, VA	08/03/2000	Philadelphia.
Kingsway Mortgage Corporation	1104 Wescove Place, Ste B, West Covina, CA 92790.	Los Angeles, CA	06/04/2000	Santa Ana.
Kingsway Mortgage Corporation	1104 Wescove Place, Ste B, West Covina, CA 92790.	Santa Ana, CA	06/04/2000	Santa Ana.
Mortgage One Corporation	16377 Main St, Ste C, Hesperia, CA 92345	Santa Ana, CA	08/03/2000	Santa Ana.
National Charter Mortgage	1515 W. 190th Street, Ste 150, Gardena, CA 90248.	Los Angeles, CA	06/04/2000	Santa Ana.
Southeast Mortgage Bankers	3931 Tweedy Blvd, South Gate, CA 90280	Los Angeles, CA	08/03/2000	Santa Ana.
Specialized Financial Services	1909 Central, Ste 200, Bedford, TX 76021	Fort Worth, TX	08/03/2000	Denver.
Sunshine Mortgage Services	2002 Southside Blvd, Ste 100, Jacksonville, FL 32216.	Jacksonville, FL	08/14/2000	Atlanta.
TWG Investments Incorporated	11760 Central Ave, Ste 205, Chino, CA 91710.	Santa Ana, CA	08/07/2000	Santa Ana.
Volunteer Trust Mortgage Corporation.	801 West 7th Street, Columbia, TN 38401	Nashville, TN	06/04/2000	Atlanta.

Dated: October 17, 2000.

William C. Apgar,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 00–27607 Filed 10–26–00; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of National Gas Pipeline Permit

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given as required under Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449; 30 U.S.C. 185) as amended by Public Law 93–153, that Gulf Liquids New River Project L.L.C., Gonzalez, Louisiana, has applied for a right-of-way for a 10-inch pipeline crossing a portion of the Bayou Savauge National Wildlife Refuge, in Orleans Parish, Louisiana.

This notice advises the public that the Fish and Wildlife Service plans to issue a permit to Gulf Liquids New River Project L.L.C., for 30-foot-wide right-of-way for the construction, operation and maintenance of 10-inch natural gas pipeline crossing under a portion of the Bayou Savauge National Wildlife Refuge. Right-of-way will cross a corner of the refuge for a distance of approximately 136 feet and will be adjacent to existing sewer and waterline rights-of-way. Approximately 8,000 square feet of refuge surface will be used temporarily for construction purposes. Wetland restoration measures are stipulated and costs will be borne by applicant.

EFFECTIVE DATE: Interested persons desiring to comment on this application should do so on or before November 27, 2000.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Regional Director, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia 30345. You may also comment via the Internet to Sam_Hamilton@fws.gov. Please submit Internet comments as an ASCHII file. Include ''Attn: Harry Flaaten'' and your name and home address in your message. You may also hand-deliver your comments to the Regional Director

at the address given above. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Respondents may request, prominently at the beginning of their comments, that we withhold their identity and home address from the rulemaking record, which we will honor to the extent allowable by law. We will make all submissions from organizations or business, and from individuals identifying themselves as representatives or officials of organizations or businesses, available to the public in their entirety. We will not consider anonymous comments.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Flaatan, Senior Realty Specialist, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 420, Atlanta, Georgia 30345, Telephone 404/679–7203.

Dated: October 12, 2000.

Judy L. Jones,

Acting Regional Director.

[FR Doc. 00–27465 Filed 10–26–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR128–6332; 01–0009]

Emergency Road Closure

AGENCY: Bureau of Land Management, U.S. Department of Interior.

ACTION: Notice of emergency road closure.

SUMMARY: Emergency closure of Bureau of Land Management (BLM) Road No. 29–11–24.0, which is within R.11 W., T.29 S., Sections 23 and 24, Williamette Meridian, in the Coos Bay District, Coos County, Oregon. This action is being taken to prevent further degradation of culturally-sensitive areas within the Coquille Forest. The Coquille Forest is administered by the Bureau of Indian Affairs for the Coquille Indian Tribe, and was administered by the BLM prior to congressional designation of the Coquille Forest. This action is intended to prevent unauthorized entry of four-wheel vehicles onto meadow areas which can be accessed using BLM Road No. 29–11–24.0, while continuing to allow for pedestrian, equestrian and bicycle use. This emergency closure is for a period of one year, while the BLM prepares an environment assessment with public participation to analyze the proposal for a long term closure of Road 29–11–24.0. This closure order is in accordance with provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) and 43 CFR 8364.1.

DATES: Emergency road closure extends from December 1, 2000 through November 31, 2001.

ADDRESSES: Address all comments concerning this emergency road closure to Stephan R. Samuels, Team Lead, Coos Bay BLM District, 1300 Airport Lane, North Bend, Oregon, 97459.

FOR FURTHER INFORMATION CONTACT: Stephan R. Samuels, 541–751–4244.

Dated: October 19, 2000.

Karla Bird,

Myrtlewood Field Manager.

[FR Doc. 00–27668 Filed 10–26–00; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–067–1050–ET, CACA 39853]

Public Land Order No. 7469; Withdrawal of Public Land for the Indian Pass Area; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 9,360.74 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the Native American values, cultural resources, and visual quality of the Indian Pass area.

EFFECTIVE DATE: October 27, 2000.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM, California State Office, 2800 Cottage Way, Sacramento, California 95825–1887, 916–978–4675.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), for the Bureau of Land Management to protect the Native American values, cultural resources, and visual quality of the Indian Pass area:

San Bernardino Meridian

T. 13 S., R. 20 E.,
Sec. 25, E½.
T. 13 S., R. 21 E.,
Sec. 21, NE¼, E½NW¼, and SW¼;
Sec. 28, NW¼ and NW¼SW¼;
Secs. 29 to 33, inclusive.
T. 14 S., R. 20 E.,
Sec. 1, E½;
Sec. 11, E½;
Secs. 12 to 14, inclusive.
T. 14 S., R. 21 E.,
Sec. 4, lots 1 and 2 of NW¼ and NW¼SW¼;
Sec. 5, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, and S½;
Sec. 6, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and SE¼;
Sec. 7, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and E½;
Sec. 8, N½NE¼ and W½;
Sec. 17, NW¼NW¼;
Sec. 18, lots 1 and 2 of NW¼ and NE¼.

The area described contains 9,360.74 acres in Imperial County.

2. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: October 20, 2000.

Sylvia V. Baca,

Assistant Secretary of the Interior.

[FR Doc. 00–27625 Filed 10–26–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–6333–ET; GPO–0342; OR–19145]

Public Land Order No. 7468; Partial Revocation of Secretarial Order Dated January 21, 1927; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a Secretarial order insofar as it affects 280 acres of National Forest System lands withdrawn by the Bureau of Land Management for use as Power Site Classification No. 164. The lands are no longer needed for the purpose for which they were withdrawn. This action will open the lands to such forms of disposition as may by law be made of National Forest System lands. All of the lands have been and will remain open to mining and mineral leasing subject to other segregations of record.

EFFECTIVE DATE: November 13, 2000.

FOR FURTHER INFORMATION CONTACT: Allison O'Brien, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6171.

By virtue of the authority vested in the Secretary of the Interior by Section

204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated January 21, 1927, which established Bureau of Land Management Power Site Classification No. 164, is hereby revoked insofar as it affects the following described lands:

Willamette Meridian

T. 16 S., R. 5 E.,
Sec. 24, W½NE¼.
T. 16 S., R. 6 E.,
Sec. 21, SE¼SE¼;
Sec. 22, SW¼SW¼;
Sec. 27, W½NW¼;
Sec. 28, NE¼NE¼.

The areas described aggregate 280 acres in Lane County.

2. At 8:30 a.m. on November 13, 2000, the lands described in paragraph 1 shall be opened to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: October 20, 2000.

Sylvia V. Baca,

Assistant Secretary of the Interior.

[FR Doc. 00–27624 Filed 10–26–00; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Trail of Tears National Historic Trail Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92–463, that a meeting of the Trail of Tears National Historic Trail Advisory Council will be held December 15, 2000, 8:00 a.m., at the Radisson Hotel, 185 Union Ave., Memphis, TN.

The Trail of Tears National Historic Trail Advisory Council was established administratively under authority of Section 3 of Public Law 91–383 (16 U.S.C. 1s–2(c)), to consult with the Secretary of the Interior on the implementation of a comprehensive plan and other matters relating to the Trail, including certification of sites and segments, standards for erection and maintenance of markers, preservation of trail resources, American Indian relations, visitor education, historical research, visitor use, cooperative management, and trail administration.

The matters to be discussed include:

- Plan Implementation Status
- Trail Association Status
- Cooperative Agreements Negotiation
- Trail Route and other Historical Research

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with David Gaines, Superintendent.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact David Gaines, Superintendent, Long Distance Trails Group Office—Santa Fe, National Park Service, P.O. Box 728, Santa Fe, New Mexico 87504–0728, telephone 505/988–6888. Minutes of the meeting will be available for public inspection at the Office of the Superintendent, located in Room 1081, Paisano Building, 2968 Rodeo Park Drive West, Santa Fe, New Mexico.

Dated: October 19, 2000.

David M. Gaines,

Superintendent.

[FR Doc. 00–27690 Filed 10–26–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO

AGENCY: National Park Service

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 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 and a contract physical anthropologist, in consultation with representatives of the Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Cherokee Nation, Oklahoma; Chickasaw Nation, Oklahoma; Choctaw Nation of Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Jena Band of Choctaw Indians, Louisiana; Kialegee Tribal Town, Oklahoma; Mississippi Band of Choctaw Indians, Mississippi; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Thlopthlocco Tribal Town, Oklahoma; and the United Keetoowah Band of Cherokee Indians of Oklahoma.

At an unknown date, human remains representing two individuals were removed from ancient mounds in Alabama. At an unknown date between the 1920's and the 1950's, the two sets of remains were acquired by the University of Denver Museum of Anthropology. One set of remains is listed as coming from ''Alabama Mound 1,'' and the other set of remains is listed as coming from ''Alabama Mound 2.'' Mounds generally were constructed by ancient Native Americans in Alabama beginning circa 100 B.C. and continuing to circa A.D. 1600. After that date, individual Native Americans may have been buried in old mounds throughout the 19th century. There is no other information on the provenience, age, or cultural context of the remains, or the circumstances under which these remains were recovered. No known individuals were identified. No associated funerary objects are present.

Alabama has been identified as the ancestral land of the Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Cherokee Nation, Oklahoma; Chickasaw Nation, Oklahoma; Choctaw Nation of Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Jena Band of Choctaw Indians, Louisiana; Kialegee Tribal Town, Oklahoma; Mississippi Band of Choctaw Indians, Mississippi; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Thlopthlocco Tribal Town, Oklahoma; and the United Keetoowah Band of Cherokee Indians of Oklahoma. This association is supported by oral historical, archaeological, ethnological, historical, and geographical evidence.

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 two individuals of Native American ancestry. Officials of the University of Denver Department of Anthropology and Museum of Anthropology also 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 Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Cherokee Nation, Oklahoma; Chickasaw Nation, Oklahoma; Choctaw Nation of Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Jena Band of Choctaw Indians, Louisiana; Kialegee Tribal Town, Oklahoma; Mississippi Band of Choctaw Indians, Mississippi; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Thlopthlocco Tribal Town, Oklahoma; and the United Keetoowah Band of Cherokee Indians of Oklahoma.

This notice has been sent to officials of the Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Cherokee Nation, Oklahoma; Chickasaw Nation, Oklahoma; Choctaw Nation of Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Jena Band of Choctaw Indians, Louisiana; Kialegee Tribal Town, Oklahoma; Mississippi Band of Choctaw Indians, Mississippi; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Thlopthlocco Tribal Town, Oklahoma; and the United Keetoowah Band of Cherokee Indians of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Jan I. Bernstein, Collections Manager and NAGPRA Coordinator at the University of Denver Museum of Anthropology, 2000 Asbury, Sturm Hall S–146, Denver, CO 80208–2406, email jbernste@du.edu, telephone (303) 871–2543, before November 27, 2000. Repatriation of the human remains to the Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Cherokee Nation, Oklahoma; Chickasaw Nation, Oklahoma; Choctaw Nation of Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Jena Band of Choctaw Indians, Louisiana; Kialegee Tribal Town, Oklahoma; Mississippi Band of Choctaw Indians, Mississippi; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Thlopthlocco Tribal Town, Oklahoma; and the United Keetoowah Band of Cherokee Indians of Oklahoma may begin after that date if no additional claimants come forward.

Dated: October 17, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–27611 Filed 10–26–00 ; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 533 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

Pennsylvania
PA000002 (Feb. 11, 2000)
PA000042 (Feb. 11, 2000)
PA000047 (Feb. 11, 2000)

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CA000034 (Feb. 11, 2000)
CA000038 (Feb. 11, 2000)
CA000040 (Feb. 11, 2000)
CA000041 (Feb. 11, 2000)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 19th day of October 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–27378 Filed 10–26–00; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed new collection of the Survey of Respirator Use and Practices. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before December 26, 2000.

ADDRESSES: Send comments to Ausie B. Grigg, Jr., BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Ausie B. Grigg, Jr., BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The National Institute for Occupational Safety and Health (NIOSH) and the Bureau of Labor Statistics (BLS), U.S. Department of Labor (DOL) have agreed to conduct a survey of United States employers regarding the use of respiratory protective devices. Employers are required to provide respirators to workers when such equipment is necessary to protect the health of the employee. The employer has the responsibility to provide respirators that are applicable and suitable for the purpose intended, and to establish and maintain a respiratory protection program.

The NIOSH respirator certification and research program must assure, in the best manner reasonably possible, that users are provided with correct and needed products and information so that they can be properly protected when using respirators. However, there are no detailed estimates of current respirator usage. The NIOSH respirator certification program operates under the assumption that all respirator users are using respirators in a complete respirator program. On the other hand, sources such as respirator manufacturers, state that users often wear respirators with little training and without the benefit of a respirator program. As a result, there is a pressing

need to gather accurate and up-to-date information regarding respirator use in the workplace so that the NIOSH respirator certification and research program can assure that workers have needed products and are properly informed and protected.

II. Desired Focus of Comments

The Bureau of Labor Statistics 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 responses.

III. Current Action

OMB clearance is being sought for the Survey of Respirator Use and Practices.

Type of Review: New Collection.

Agency: Bureau of Labor Statistics.

Title: Survey of Respirator Use and Practices.

OMB Number: 1220–New.

Affected Public: Business or other for-profit; Not-for-profit institutions; Farms.

Total Respondents: 40,000.

Frequency: One-time; Non-recurring.

Average Time Per Response: The weighted average per response is 30 minutes. Ninety (90) minutes for establishments with respirator use. Fifteen (15) minutes for establishments with no respirator use.

Estimated Total Burden Hours: 20,000 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, D.C., this 20th day of October 2000.

Karen A. Krein,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 00–27667 Filed 10–26–00; 8:45 am]

BILLING CODE 4510–24–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 15c2–12, SEC File No. 270–330, OMB Control No. 3235–0372

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of a previously approved collection of information discussed below.

- Rule 15c2–12 Disclosure requirements for municipal securities

Rule 15c–12, under the Securities Exchange Act of 1934, requires underwriters of municipal securities: (1) To obtain an review a copy of an official statement deemed final by an issuer of the securities, except for the omission of specified information; (2) in non-competitively bid offerings, to make available, upon request, the most recent preliminary official statement, if any; (3) to contract with the issuer of the securities, or its agent, to receive, within specified time periods, sufficient copies of the issuer's final official statement to comply both with this rule and any rules of the MSRB; (4) to provide, for a specified period of time, copies of the final official statement to any potential customer upon request; (5) before purchasing or selling municipal securities in connection with an offering, to reasonably determine that the issuer or other specified person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide certain information about the issue or issuer on a continuing basis to a nationally recognized municipal securities information repository; and (6) to review the information the issuer of the municipal security has undertaken to provide prior to recommending a transaction in the municipal security.

These disclosure and recordkeeping requirements will ensure that investors have adequate access to official disclosure documents that contain details about the value and risks of particular municipal securities at the time of issuance while the existence of compulsory repositories will ensure that investors have continued access to terms and provisions relating to certain static features of those municipal securities. The provisions of Rule 15c2–12 regarding an issuer's continuing disclosure requirements assist investors by ensuring that information about an issue or issuer remains available after the issuance.

Municipal offerings of less than $1 million are exempt from the rule, as are offerings of municipal securities issued in large denominations that are sold to no more than 35 sophisticated investors, have short-term maturities, or have short-term tender or put features. It is estimated that approximately 12,000 brokers, dealers, municipal securities dealers, issuers of municipal securities, and nationally recognized municipal securities information repositories will spend a total of 123,850 hours per year complying with Rule 15c2–12. Based on average cost per hour of $50, the total cost of compliance with Rule 15c2–12 is $6,192,500.

There is no specific retention period applied by Rule 15c2–12 for the recordkeeping requirement contained in Rule 15c2–12. The retention period is determined by private agreement between a nationally recognized municipal securities information repository and the issuer.

The recordkeeping requirement is mandatory to ensure that investors have access to information about the issuer and particular issues of municipal securities. This rule does not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General Comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549.

Comments must be submitted to OMB within 30 days of this notice.

Dated: October 20, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–27612 Filed 10–26–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27257]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

October 20, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 14, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After November 14, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company, Inc., et al. (70–9353)

American Electric Power Company, Inc. (''AEP''), a registered holding company, AEP Energy Services, Inc. and AEP Resources, Inc., (collectively ''Applicants''), both nonutility subsidiaries of AEP, and all located at 1 Riverside Plaza, Columbus, Ohio 43215, have filed a post-effective amendment under sections 6(a), 7, 9(a) and 10 of the Act and rule 54 under the Act to a previously filed application-declaration.

By order dated November 2, 1998 (HCAR No. 26933) (''Prior Order''), Applicants are currently authorized through December 31, 2003 (''Authorization Period'') to acquire nonutility energy assets in the United States that would be incidental to, and would assist, Applicants and their subsidiaries in connection with energy marketing, brokering and trading (collectively, ''Energy Assets''). These assets include natural gas production, gathering, processing, storage and transportation facilities and equipment, liquid oil reserves and storage facilities and associated facilities. Applicants were authorized to invest up to $800 million (''Investment Limitation'') during the Authorization Period in such Energy Assets or in the equity securities of companies substantially all of whose physical properties consist of such Energy Assets.

Applicants request that the Investment Limitation be increased to $2.0 billion. Applicants state that they intend to use the increased investment authority as needed to enable Applicants and such subsidiaries to continue to add nonutility, marketing-related assets as and when market conditions warrant, whether through acquisitions of specific assets or groups of assets that are offered for sale, or by acquiring existing companies.

Entergy Corporation (70–9723)

Entergy Corporation (''Entergy''), a registered holding company, located at 639 Loyola Avenue, New Orleans, Louisiana 70113, filed an application-declaration under sections 9(a), 10, 12(b), 12(c), and 13(b) of the Act and rules 45, 46, 54, 86, 87, and 90 under the Act.

Together with Koch Energy, Inc. (''Koch''), an unaffiliated company that is not currently regulated under the Act, Entergy intends to form a new limited partnership, Entergy-Koch, LP (''Entergy-Koch'').[1] Entergy-Koch will be a partially-owned subsidiary of Entergy, through which Entergy and Koch will combine certain discrete non-utility energy assets.

Entergy states that it will contribute to Entergy-Koch its interests in certain companies.[2] Specifically, Entergy intends to transfer its interests in Entergy Power Marketing Corp. (''EPMC''), which markets and trades physical and financial energy commodities in various wholesale and retail markets within the United States,[3] and EGT Holding, Ltd. (''EGT''), whose sole asset is the stock of Entergy Trading & Marketing, Ltd. (''ET&M''), a company that trades energy commodities to manage the fuel supply and power sales risk of certain foreign utility companies owned by Entergy.

Koch will contribute its interests in Koch Energy Trading, Inc. (''KET''), which is engaged in energy trading and marketing,[4] and Koch Gateway Pipeline Company (''Gateway Pipeline''), which owns and operates a 9,000-mile interstate natural gas pipeline system and related gas gathering and storage facilities. Entergy further states that it intends to merge EPMC and KET to form a new energy marketing and trading company (''Trading Company'').

The general partner of Entergy-Koch, with a 1% interest, will be Entergy-Koch, LLC (''EK–LLC''), a Delaware limited liability company that will be held in equal shares by Koch and Entergy Power International Holdings Corporation (''EPIH''), a wholly-owned subsidiary of Entergy. In addition, Entergy and Koch will each acquire and hold, indirectly, a 49.5% limited partnership interest in Entergy-Koch.

In connection with the establishment of the joint venture, Entergy requests authority to acquire, directly or indirectly, through December 31, 2005, up to $1.2 billion (''Investment Limitation'') in energy-related, nonutility assets that are incidental to energy marketing and brokering (''Energy-Related Assets''),[5] or the equity securities of companies substantially all of whose physical assets consist of Energy-Related Assets (''Energy-Related Equity Securities''), including Gateway Pipeline. Entergy states that the prices of Energy-Related Assets and Energy-Related Equity Securities will be and, in the case of Gateway Pipeline, has been established through arms-length negotiations and

[1] Entergy states that it is currently authorized to form intermediate holding companies such as Entergy-Koch. *See Entergy Corp.,* HCAR No. 27039 (June 22, 1999) (authorizing Entergy to form companies to acquire and hold the securities of one or more energy-related companies).

[2] The Commission previously authorized Entergy to reorganize its energy-related interests, including the intermediate holding companies that hold those interests. *See Entergy Corp.,* HCAR No. 27039 (June 22, 1999).

[3] EPMC currently sells approximately 200 million cubic feet of gas per day and, in 1999, sold approximately 47.2 million MWh of electricity.

[4] The direct acquisition of energy marketing companies such as KET by Entergy is exempt from the requirements of section 9(a) of the Act by rule 58(a)(1) under the Act.

[5] Energy-Related Assets include natural gas production, gathering, processing, storage and transportation facilities and equipment, liquid oil reserves and storage facilities, and associated facilities, that would be incidential to and would assist a future subsidiary in connection with energy marketing, brokering and trading.

will be applied against the Investment Limitation. Entergy states that if its common stock is used as consideration to acquire Energy-Related Assets or Energy-Related Securities, the market value of the stock on the date of issuance will be counted against the Investment Limitation.

Entergy also requests authority to expand the energy marketing and brokering activities of Trading Company and of any other energy marketing affiliate that may be formed or acquired by Entergy-Koch to include the marketing and brokering of energy commodities outside the United States.[6]

To finance these energy-related activities, Entergy requests authority for Entergy-Koch to issue up to an additional $2 billion (''Guarantee Limitation'') in guarantees and other forms of credit support not exempt under rules 45 and 52 under the Act, through December 31, 2005, on behalf or for the benefit of its direct and indirect subsidiaries.[7] Entergy states that all credit support will be provided by Entergy-Koch, without recourse to or support by either Entergy or Koch, and proposes that any credit support outstanding on December 31, 2005 be allowed to terminate or expire in accordance with its terms.

Entergy also requests authority for Entergy-Koch and its direct and indirect subsidiaries to declare and pay of dividends out of capital or unearned surplus without limitation regarding the time period during which dividends may be paid.[8]

Further, Entergy requests authority for its nonutility subsidiaries, including Entergy-Koch and its subsidiaries, to provide administrative and consulting services to each other at fair market prices, subject to certain limitations previously imposed by the Commission.[9]

[6] EPMC is already authorized to engage in wholesale and retail energy marketing activities throughout the United States. *See Entergy Corp.,* HCAR No. 26812 (January 6, 1998).

[7] Entergy and certain of its nonutility subsidiaries are already authorized, through December 31, 2005, to issue up to $2 billion in guarantees and other forms of credit support to or for the benefit of certain subsidiaries and affiliates, respectively. *See Entergy Corp.,* HCAR No. 27216 (August 21, 2000).

[8] Entergy and its nonutility subsidiaries are already authorized to declare and pay dividends out of capital and unearned surplus through December 31, 2002. *See Entergy Corp.,* HCAR No. 27039 (June 22, 1999).

[9] These limitations were imposed in *Entergy Corp.,* HCAR No. 27039 (June 22, 1999).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–27613 Filed 10–26–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27258]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

October 20, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 14, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After November 14, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Co. (70–5943)

American Electric Power Company, Inc. (''AEP''), a registered holding company located at 1 Riverside Plaza, Columbus, Ohio 43215, has filed a post-effective amendment under sections 6(a) and 7 of the Act and rule 54 under the Act to a previously filed declaration.

AEP is currently authorized to issue up to 55,200,000 shares of its common stock (''Common Stock'') under AEP's Dividend Reinvestment and Stock Purchase Plan (''DRP'') through December 31, 2000.[1] AEP states that, as of June 30, 2000, 7,426,406 shares of Common Stock (''Remaining Shares'') have not yet been issued. AEP now requests authority to issue the Remaining Shares, in accordance with the DRP, through September 30, 2006.

AEP states that the proceeds of the issuance and sale of the Remaining Shares will be used to pay certain unsecured debts of AEP as they mature, make additional investments in common stock equities of AEP subsidiaries, and for other corporate purposes, including the acquisition of exempt wholesale generators and foreign utility companies.

GPU, Inc. (70–7670)

GPU, Inc. (''GPU''), 300 Madison Avenue, Morristown, New Jersey 07960, a registered holding company, has filed a post-effective amendment to its application-declaration under sections 6(a) and 7 of the Act and rules 53 and 54 under the Act.

By orders of the Commission dated October 23, 1989 (HCAR No. 24971) and December 8, 1995 (HCAR No. 26425) (respectively, ''1989 Order'' and ''1995 Order'' and, collectively, ''Orders''), GPU was authorized to issue and sell, from time to time through December 31, 2000, under a Dividend Reinvestment and Stock Purchase Plan (''Plan''), up to 2.5 million shares of its common stock, $2.50 par value (''Common Stock''). Common Stock is purchased under the Plan either on the open market or directly from GPU in the form of authorized but unissued shares or previously reacquired shares, as GPU may direct, by the administrator of the Plan.

GPU now proposes to extend to December 31, 2010 the time it may issue and sell authorized but unissued and reacquired shares of Common Stock under the Plan.

GPU, Inc., et al. (70–8937)

GPU, Inc. (''GPU''), a registered public utility holding company, and its wholly-owned subsidiary companies, GPU Service, Inc. (''GPUS''), both located at 300 Madison Avenue, Morristown, New Jersey 07960, and GPU International,

[1] Under the terms of the most recent order in this file, AEP was allowed to issue up to 54 million shares of its common stock through December 31, 2000. *See American Electric Power,* HCAR No. 26553 (August 13, 1996). In an order authorizing AEP to acquire all of the outstanding common stock of Cental and South West Corporation, a registered holding company, the authority of the CSW Dividend Reinvestment and Stock Purchase Plan was terminated and AEP was authorized to issue an additional 1.2 million shares of its common stock under the DRP through December 31, 2000, for an aggregate of 55.2 million shares. *See American Electric Power,* HCAR No. 27186 (June 14, 2000).

Inc. (''GPUI''), located at One Upper Pond Road, Parsippany, New Jersey 07054, have filed with this Commission a post-effective amendment under sections 6(a), 7, and 12(b) of the Act and rules 45 and 54 under the Act to an application-declaration previously filed under the Act.

By orders dated April 10, 1997 (HCAR No. 26702) and March 26, 1997 (HCAR No. 26694) (''Orders''), the Commission authorized, among other things, GPU, through December 31, 2000, to guarantee the debt of each of their direct and indirect subsidiaries that engage in bordering and marketing of electricity, natural gas and other energy commodities throughout the United States (''Energy Subsidiaries'') under rule 58 under the Act. The maximum amount of guarantee debt and other obligations authorized at any one time is $150 million. The Orders also authorize GPU and GPUI to invest, through December 31, 2000, in the aggregate no more than $20 million in the energy commodities business either by the acquisition of securities or by making capital contributions to existing subsidiaries of GPU and/or GPUI.

GPU and GPUI now request an extension of time during which GPU may guarantee the debt of the Energy Subsidiaries and GPU and GPUI may invest in the energy commodities business until December 31, 2003. In all other respects, the terms and conditions of the transactions authorized by the Commission in this file would remain unchanged.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–27614 Filed 10–26–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43463; File No. SR–Amex–00–31]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the American Stock Exchange LLC Amending the Alternative Listing Criteria of Section 101(b) of the Amex Company Guide

October 19, 2000.

I. Introduction

On May 30, 2000, the American Stock Exchange LLC (''Exchange'' or ''Amex'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change amending certain provisions of the Amex's alternative listing criteria. The proposed rule change was published for comment in the **Federal Register** on August 17, 2000.[3] The Commission received no comments on the proposal. This order approves the proposal.

II. Description of the Proposal

Section 101(b) of the *Amex Company Guide* sets forth alternative numerical guidelines applied by the Exchange in considering the eligibility of issuers to list on the Exchange. These alternate criteria currently include a three-year history of operations, stockholders' equity of at least $4 million, the distribution criteria of Section 102(a) of the *Amex Company Guide* (which includes, among other criteria, a minimum of 800 public shareholders together with a minimum public distribution of 500,000 shares, or a minimum of 400 public shareholders together with a minimum public distribution of 1,000,000 shares), and a $15 million aggregate market value of publicly held shares. The Exchange proposes to reduce the operating history timeframe from three to two years.

The Exchange believes that certain relatively new companies, particularly in high growth industries such as technology, biotechnology, and the Internet, may be attractive candidates for Exchange listing and trading when assessed under the provisions of Section 101(b) but may lack a three-year operating history. The Exchange believes a reduced minimum timeframe will provide the Exchange with greater flexibility in considering companies for listing, particularly in high growth industries where the Exchange believes it is possible for a company to demonstrate promising and attractive prospects over a relatively short time period.

III. Discussion

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] in that it is designed to remove impediments to and perfect the mechanism of a free and open market.[6]

The Commission believes that the development and enforcement of transparent standards governing the listing of securities on an exchange is of critical importance to exchange markets and to the investing public. The Commission believes that a reduced minimum required operating history of two years should provide the Exchange with greater flexibility in considering companies for listing on the Exchange. In addition, the Commission notes that companies seeking to have their securities listed on the Exchange must also satisfy the remaining requirements of Section 101(b) of the *Amex Company Guide,* which include stockholders' equity of at least $4 million, a $15 million aggregate market value of publicly held shares, and either a minimum of 800 public shareholders together with a minimum public distribution of 500,000 shares, or a minimum of 400 public shareholders together with a minimum public distribution of 1,000,000 shares.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Amex–00–31) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–27616 Filed 10–26–00; 8:45 am]

BILLING CODE 2010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 43146 (Aug. 10, 2000), 65 FR 50253.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] In approving this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43471; File No. SR–CSE–00–08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by The Cincinnati Stock Exchange, Incorporated To Add CSE Rule 11.9(u) and Interpretation .01 Under the Rule to the Minor Rule Violation Program

October 20, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 there under,[2] notice is hereby given that on October 13, 2000, The Cincinnati Stock

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange, Incorporated (''CSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE proposes to amend Exchange Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules, to include CSE Rule 11.9(u) and Interpretation .01 thereunder, requiring CSE members to display certain market orders (''Market Order Display Rule''). The text of the proposed rule change is below. Additions are in italics.

Rule 8.15 Imposition of Fines for Minor Violation(s) of Rules.

No Change.

Interpretations and Policies

.01 List of Exchange Rule Violations and Fines Applicable thereto Pursuant to Rule 8.15

(a)–(g) No Change.

(h) Rule 11.9(u) and Interpretation .01 related to the requirement to immediately execute market orders at an improved price or expose the market order on the Exchange for a minimum of fifteen seconds in an attempt to improve the price.

Recommended Fine Amount

$1,000 first violation of the 2% quarterly threshold

$2,500 second violation

Third violation Business Conduct Committee Hearing

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CSE proposed to amend Exchange Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules, which provides for an alternative disciplinary regimen involving violations of Exchange rules that the Exchange determines are minor in nature. In lieu of commencing a disciplinary proceeding pursuant to Rules 8.1 through 8.14, the Minor Rule Violation Program (''Program'') permits the Exchange to impose a fine, not to exceed $2,500, on any member, member organization, or registered or non-registered employee of a member or member organization (''Member'') that the Exchange determines has violated a rule included in the Program. Adding a particular rule violation to the Program in no way circumscribes the Exchange's ability to address violations of those rules through more formal disciplinary rules. The Program simply provides the Exchange with greater flexibility in addressing rule violations that warrant a stronger regulatory response after the issuance of cautionary letters and yet, given the nature of the violations, do not rise to the level of requiring formal disciplinary proceedings.

The Exchange proposes to add the failure to properly expose on the Exchange or immediately price improve certain customer market orders, as provided in Interpretation .01 to Exchange Rule 11.9(u), to the list of Exchange rule violations and fines included in the Program.[3] The Exchange believes that market order exposure violations often are inadvertent and, in most cases, are best addressed in a summary fashion. However, because Interpretation .01 is predicated on the Exchange's commitment to promote customer price improvement opportunities, violations of this Interpretation require sanctions more rigorous than a series of cautionary letters prior to formal proceedings.

Under the proposal, Exchange regulatory staff will review a sampling of Exchange members' market orders, based on appropriate market conditions, to determine if a threshold of market order exposure violations has been exceeded. Violations of Interpretation .01 to Exchange Rule 11.9(u) that exceed 2% of all eligible market orders of any Member for any calendar quarter will result in a $1,000 fine for that quarter. The second quarterly violation within a rolling 12-month period will result in a $2,500 fine. A third quarterly violation within a rolling 12-month period will result in a BSE Business Conduct Committee hearing with a staff recommendation of a $10,000 fine.

The Exchange notes that the minor rule violation fine schedule is merely a recommended schedule, and that fines of more or less than the recommended amount can be imposed (up to a $2,500 maximum) in appropriate situations. Also, the Exchange reserves the right to proceed with formal disciplinary action when, in the Exchange's opinion, circumstances warrant a more severe level of sanction or remedial action.

2. Statutory Basis

The CSE believes that the proposed rule change is consistent with Section 6(b) of the Act[4] in general and furthers the objectives of Sections 6(b)(5),[5] 6(b)(6),[6] 6(b)(7),[7] and 6(d)(1)[8] in particular. The proposed rule change is consistent with Section 6(b)(5)[9] in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the proposed rule change will augment the Exchange's ability to police its market and will increase the Exchange's flexibility in responding to minor violations of Exchange rules.

The Exchange also believes the proposal is consistent with the Section 6(b)(6)[10] requirement that the rules of an exchange provide appropriate discipline for violations of Commission and Exchange rules. The Exchange believes the proposed rule change will provide a procedure to appropriately discipline those Members whose violations are minor in nature. In addition, because Rule 8.15 provides procedural safeguards to the person fined and permits a person disciplined to request a full hearing on the matter, the CSE believes the proposal provides a fair procedure for the disciplining of Members consistent with Sections 6(b)(7)[11] and 6(d)(1)[12] of the Act.

[3] For further discussion of the CSE's Market Order Display Rule, *see* CSE Regulatory Circular to Exchange Members 97–07 (June 17, 1997).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(6).

[7] 15 U.S.C. 78f(b)(7).

[8] 15 U.S.C. 78f(d)(1).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(6).

[11] 15 U.S.C. 78f(b)(7).

[12] 15 U.S.C. 78f(d)(1).

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments were solicited or received in connection with the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities, and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 CSE. All submissions should refer to file No. SR–CSE–00–08 and should be submitted by November 12, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–27649 Filed 10–26–00; 8:45 am]

BILLING CODE 8010–01–M

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43470; File No. SR–CSE–00–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Cincinnati Stock Exchange, Incorporated to Reduce the Fee to Members for Professional Agency Transactions

October 20, 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 October 13, 2000, The Cincinnati Stock Exchange, Incorporated (''CSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CSE under Section 19(b)(3)(A(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE proposes to amend Exchange Rule 11.10A(d), Professional Agency Transactions, to reduce the fee to members for professional agency transactions[4] from $0.005 per share ($0.50/100 shares) to $0.0025/share ($0.25/100 shares). The text of the proposed rule change is available at the CSE and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] CSE Rule 11.9(a)(8) defines a professional agency order as an order entered by a CSE Member or approved dealer as agent for the account of a broker-dealer, futures commission merchant or a member of a contract market.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

1. Purpose

The proposed rule change amends the Exchange's fee schedule to decrease professional agency transaction fees from $0.005 per share ($0.50/100 shares) to $0.0025 per share ($0.25/100 shares). The fee reduction is proposed to allow professional agency transactions to be more competitive with other execution execution types on the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[5] in general, and in particular, furthers the objectives of Section 6(b)(4) of the Act,[6] in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement of Burden on Competition

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received in connection with the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

thereunder,[8] because it involves a member due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CSE–00–07, and should be submitted by November 17, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–27650 Filed 10–26–00; 8:45 am]

BILLING CODE 8010–01–M

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34 43462; File No. SR–ISE–00–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange, LLC Relating to Payment for Order Flow

October 19, 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 September 12, 2000, the International Securities Exchange, LLC (the ''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to establish a payment for order flow program as follows:

Authorization To Impose a Payment-for-Order-Flow Fee. The ISE will impose fees on Primary Market Makers (''PMMs'') and Competitive Market Makers (''CMMs''). There will be up to three separate fees on a per-contract basis:

- Fees on transactions with Public Customer;[3]
- Fees on transactions with Non-Customers[4] other than market makers on another options exchange (''away market makers''); and
- Fees on transactions with away market makers.

There will not be any fees on transactions in which all parties are PMMs and CMMs. The Exchange will establish the specific fees in a separate rule filing submitted pursuant to Section 19(b)(3)(A) of the Act.[5] The three fees may be the same, or may differ from each other; one or more fees may be set at $0 per contract. The fees on transactions with Non-Customers and away market makers may not be higher than the fee on Customer transactions, however. In addition, the fee on transactions with away market makers will not be higher than the fee on transactions with other Non-Customers.

The Exchange also will have the flexibility to establish multi-tiered fees. These tiers can be based on such factors as the overall trading activity of an option, the Exchange's market share in an option, or any other objective factor. If the Exchange establishes multi-tiered fees, the Exchange's fee filing will specify each of those fees.

Use of the Funds Generated by the Fee to Pay for Order Flow. The Exchange will separately account for the funds this fee generates on a per-group basis. That is, the Exchange will segregate these funds according to each of the groups of ''bins'' of options the Exchange trades. The PMMs will use the funds generated by the fee to pay Electronic Access Members (''EAMs'') for their order flow. The PMMs will have full discretion regarding payments, including which EAMs will be paid, the amount of the payments, and the type of order flow subject to the payment. The Exchange also will establish ''bin advisory committees'' (''BACs'') consisting of the PMM and CMMs in a bin. The Exchange will provide to all bin members information regarding payments made and the BACs will provide a forum for the discussion of, among other things, payment issues. These committees will be advisory in nature only, however, and the PMM will retain full discretion over all payment decisions.

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 ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of the statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish the structure for an ISE payment-for-order-flow program. This is a competitive response by the Exchange to similar programs of the other options exchanges. The proposal has two parts: establishing the structure of a fee to fund a payment-for-order-flow program; and establishing how the funds the fees generate will be used to pay for order flow.

Establishing a Fee Structure. The Exchange is proposing the flexibility of having up to three separate fees. The highest level of market maker fees will be on transactions between market makers and Public Customers. Because the funds generated will primarily be used to pay for customer order flow, the ISE believes that it is reasonable that market makers be ''taxed'' primarily on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The ISE defines ''Public Customer'' in ISE Rule 100(29).

[4] The ISE defines ''Non-Customer'' in ISE Rule 100(19).

[5] 15 U.S.C. 78s(b)(3)(A).

their transactions with customers to fund these payments. The structure allows for lower fees on Non-Customer transactions and away market makers, and there are no fees on transactions executed between ISE market makers.

The ISE states that the possible lower fees on Non-Customers reflect a balancing of the competitive interests that currently exist in the options markets. The Exchange seeks to encourage market makers to provide significant size for Non-Customer orders. If the payment-for-order flow fee is set at too high a level, however, PMMs and CMMs may not provide sufficient size to attract these orders to the Exchange. Thus, the Exchange believes that it is important to establish a structure that will allow it to establish a balance between generating revenue to pay for order flow and attracting Non-Customer order flow.

In addition, the Exchange is proposing a structure that could distinguish between orders of away market makers and other Non-Customers. While the fee could be lower on transactions with away market makers than with other Non-Customers, it could not be higher. This distinction recognizes certain unique aspects of away market maker order flow. In particular, pursuant to the intermarket options linkage plan [6] that the Commission has approved, ISE market makers will have certain obligations to trade against the orders of away market makers. Thus, the Exchange believes that it may be appropriate to ''tax'' these transactions less than other Non-Customer transactions, recognizing that these transactions could be in fulfillment of regulatory and market obligations and are important in promoting price discovery in the market place. This proposal establishes a structure that would allow, but not require, the fee to be set in a manner than reflects these competitive and market place factors.

The proposed rule change also provides that there will not be a fee on transactions in which all parties are PMMs and CMMs. Transactions between market makers are an important aspect of the ISE's price-discovery model. These trades often occur when market makers have different views on an options price and their quotes interact until a ''price equilibrium'' is established. In addition, these trades could occur as market makers hedge or rebalance their positions. The Exchange believes that it would be inappropriate to ''tax'' these trades. Such a ''tax'' could create incentives to avoid this type of trading, which could harm the overall depth, liquidity, and pricing efficiency of the ISE's market.

Finally, the proposal would permit the Exchange to establish multiple tiers of fees. The Exchange would define the tiers pursuant to objective criteria, including but not limited to the overall activity in an option and the Exchange's market share in an option. This is intended to provide the ISE with as much flexibility as possible in collecting funds to pay for order flow in a manner consistent with the Exchange's overall goal of creating incentives for market makers to provide deep and liquid markets.

Payment for Order Flow. The only use of funds generated will be to pay for order flow. The Exchange will segregate the funds proportionately to the bins that generated the funds, and the PMM in each bin generally will have full discretion on how to use those funds to pay for order flow. The Exchange will make the payments to the EAMs based on the PMM's directives. While the Exchange will establish BACs as a forum for CMMs to discuss payment issues with PMMs, CMMs will not have any formal role in making payment decisions.

With respect to members who receive payments for their order flow, the Exchange will be issuing appropriate circulars to its members emphasizing their disclosure and best execution obligations. The Exchange also will be providing to members various reports and other information demonstrating the quality of executions that they receive on the Exchange.

2. Basis

The basis for this proposed rule change is the requirement under Section 6(b)(5) of the Act [7] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE believes that payment-for-order-flow raises significant competitive issues. In the ISE's view, when market makers pay broker-dealers for their order flow, the true cost of executing orders is obscured, imposing a burden on price competition in the market. Specifically, the ISE believes that it is difficult to compete for order flow when undisclosed payments are influencing order routing decisions.

Furthermore, the ISE believes that these competitive issues are compounded when exchanges establish payment-for-order-flow programs. In the ISE's view, not only do the payment programs impede price discovery and competition on an intermarket basis, but these programs also can raise intramarket competitive issues. In this regard, the ISE believes that market makers on an exchange should be encouraged to compete vigorously within their markets for order flow. Exchange-mandated payment-for-order-flow programs require these competitors to act jointly in paying broker-dealers for their orders, however. The ISE believes that this mandated''tax'' on transactions may well adversely affect the ability of individual market makers to compete as vigorously as possible for order flow through aggressive quotations, thus harming intra market price competition. Moreover, in the ISE's view, to the extent that market makers do ''compete'' by paying for order flow, such payments may or may not flow through to the ultimate investor. In contrast, aggressive quotation competition clearly would flow through to investors.

Notwithstanding these concerns, the ISE believes that it must establish a level playing field on which it can compete with the other options exchanges, all of which have developed their own payment for order flow programs. Accordingly, the Exchange believes that this proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

As noted below, the Commission has permitted payment-for-order-flow programs on all four competing options exchanges to take effect pursuant to effective-on-filing rule changes. While the Commission has the authority to abrogate those filings, it has not exercised that authority.[8] In the ISE's view, the burden on competition resulting from payment-for-order-flow already is present in the market, and therefore any incremental effects of the ISE's program will be minimal. The ISE believes, moreover, that it will be at a competitive disadvantage, at least in the short term, if it is not permitted to offer a competitive program. Accordingly, the ISE believes that there is no basis under

[6] *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

[7] 15 U.S.C. 78f(b)(5).

[8] The ISE urged the Commission to abrogate the first of these filings, which was submitted by the Chicago Board Options Exchange. *See* letter dated July 14, 2000 from Michael Simon, Senior Vice President and Secretary, ISE, to Jonathan G. Katz, Secretary, SEC.

the Act to impose such an anticompetitive burden upon it.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** (or within such longer period as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the ISE consents), the Commission shall by order approve this proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–00–10 and should be submitted by November 17, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–27651 Filed 10–26–00; 8:45 am]

BILLING CODE 8010–01–M

[1] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43469; File No. SR–NASD–00–60]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Delay the Implementation Date of Changes to Riskless Principal Trade Reporting Rules

October 20, 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 October 18, 2000, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, The Nasdaq Stock Markets, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Item I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b–4(f)(1)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to delay until February 1, 2001, the implementation date of the riskless principal trade reporting rule changes announced in SR–NASD–98–59,[5] SR–NASD–98–08,[6] SR–NASD–00–52,[7] and the interpretations thereto filed in SR–NASD–99–39,[8] SR–NASD–99–52,[9] SR–NASD–00–06,[10] and SR–NASD–00–44.[11]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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

On March 24, 1999 and July 8, 1999, the Commission approved proposals to amend the NASD trade reporting rules relating to riskless principal transactions in Nasdaq National Market, Nasdaq SmallCap Market, Nasdaq convertible debt, and non-Nasdaq over-the-counter (''OTC'') equity securities, and exchange-listed securities traded in the Nasdaq InterMarket (''Riskless Principal Trade Reporting Rules'').[12] Under the new Riskless Principal Trade Reporting Rules, a ''riskless'' principal transaction is one where an NASD member, after having received an order to buy (sell) a security, purchases (sells) the security as principal at the same price to satisfy the order to buy (sell). The Rules require a firm to report a riskless principal trade as one transaction.

In the Order approving SR–NASD–98–59, the Commission asked Nasdaq to submit an interpretation providing examples of how mark-ups, mark-downs, and other fees would be excluded for purposes of the amended riskless principal rules.[13] As requested, on August 5, 1999, Nasdaq filed with the Commission SR–NASD–99–39,[14] attached to which was *Notice to Members 99–65,* which gave examples of how mark-ups and other fees will be

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] Securities Exchange Act Release No. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999).

[6] Securities Exchange Act Release No. 41606 (July 8, 1999), 64 FR 38226 (July 15, 1999).

[7] Securities Exchange Act Release No. 43303 (September 19, 2000), 65 FR 57853 (September 26, 2000).

[8] Securities Exchange Act Release No. 41731 (August 11, 1999), 64 FR 44983 (August 18, 1999).

[9] Securities Exchange Act Release No. 41974 (October 4, 1999), 64 FR 55508 (October 13, 1999).

[10] Securities Exchange Act Release No. 41494 (March 3, 2000), 65 FR 13069 (March 10, 2000).

[11] Securities Exchange Act Release No. 43103 (August 1, 2000), 65 FR 48774 (August 9, 2000).

[12] *See* footnotes 5 and 6, *supra.*

[13] Securities Exchange Act Release No. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999) at footnote 15.

[14] *See* footnote 8, *supra.*

excluded for purposes of the Riskless Principal Trade Reporting Rules. SR–NASD–99–39 [15] and *Notice to Members 99–65* were filed as an interpretation to NASD Rules 4632, 4642, 4652, and 6620.

Notices to Members 99–65 (discussing the trade reporting rules for riskless principal transactions in Nasdaq and OTC securities) and *99–66* (discussing, among other things, the trading reporting rules for the Nasdaq InterMarket) were published in August 1999. The *Notices* announced that the Riskless Principal Trade Reporting Rules would go into effect on September 30, 1999.

Shortly after publication of *Notices to Members 99–65* and *99–66,* a number of firms represented that they were unable to prepare their systems for compliance with the new Riskless Principal Trade Reporting Rules by the September 30, 1999 deadline, due (in large part) to Year 2000 (''Y2K'') remediation and testing requirements. In response, Nasdaq filed a proposed interpretation to NASD Rules 4632, 4642, 4652, and 6620, the purpose of which was to delay the implementation date of the new Riskless Principal Trade Reporting Rules until March 1, 2000.[16]

Subsequently, a number of NASD member firms requested a further extension of the implementation date of the Riskless Principal Trade Reporting Rules.[17] The firms stated that the approach described in *Notices to Members 99–65* and *99–66* for riskless principal trade reporting raised significant issues that needed to be addressed in greater detail through, for example, interpretive guidance. The firms requested an extension of the implementation date until September 1, 2000 to provide time to resolve the issues posed and to program systems. On February 23, 2000, and then again on July 28, 2000, Nasdaq filed a proposed interpretation to NASD Rules 4632, 4642, 4652, and 6620 to delay the implementation date of the new Riskless Principal Trade Reporting Rules until September 1, 2000 and November 1, 2000, respectively.[18]

Nasdaq is now requesting a further extension of the implementation date until February 1, 2001. Nasdaq believes the extension is necessary to allow Nasdaq and the firms the time to complete the programming and testing of systems that is necessary to implement the new Rules and to devise solutions to the interpretive questions that have arisen recently with respect to the implementation of the Rules. Nasdaq believes that a delay in the implementation of the Riskless Principal Trade Reporting Rules is reasonable in light of the efforts required to implement the programming changes required by the rule change and the complex issues that have been raised.

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[19] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposal has become effective pursuant to section 19(b)(3)(A)(i) of the Act,[20] and rule 19b–4(f)(1) [21] thereunder, in that it constitutes a stated policy and interpretation with respect to the enforcement of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–00–60 and should be submitted by November 17, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–27615 Filed 10–26–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43467; File No. SR–Phlx–00–32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending Rule 748, Supervision

October 20, 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 July 31, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Exchange. On October 11, 2000, the Exchange submitted Amendment No. 1 to the proposed rule

[15] *Id.*

[16] *See* footnote 9, *supra.*

[17] *See* letter to Belinda Blaine, Associate Director, SEC, dated February 18, 2000 from Automated Securities Clearance, Ltd. and the following NASD member firms: Bernard L. Madoff Securities; CIBC World Markets; Credit Suisse First Boston; Deutsche Banc Alex. Brown; Donaldson, Lufkin & Jenrette; Goldman Sachs & Co.; Jeffries & Company, Inc.; Lehman Bros.; Merrill Lynch, Pierce, Fenner & Smith, Inc.; Morgan Stanley Dean Witter; and Salomon Smith Barney Inc.

[18] *See* footnotes 10 and 11, *supra.*

[19] 15 U.S.C. 78o–3(b)(6).

[20] 15 U.S.C. 78s(b)(3)(A)(i).

[21] 17 CFR 240.19b–4(f)(1).

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 748, Supervision, in several respects.[4] First, the proposed amendment to Rule 748 would expand the definition of who must be supervised to include employees and associated persons of members, member organizations, participants, or participant organizations. The proposed amendment to Rule 748 would also require that all officers, locations, departments, and business activities of members, member organizations, participants, and participant organizations (''members and related organizations'') be supervised.

Second, the proposed amendment to Rule 748 would add an additional requirement for periodic compliance reviews and office inspections. Members and related organizations for which the Exchange is the Designated Examining Authority (''DEA'') would have to conduct compliance meetings with their personnel at least on an annual basis. In addition, members and related organizations for which the Exchange is the DEA would have to conduct office inspections according to an inspection cycle established in their written supervisory procedures.

Third, the proposed amendment to Rule 748 would require that members and related organizations have written supervisory procedures that set forth the specific supervisory system and other essential information regarding supervisory personnel.

Fourth, the proposed amendment to Rule 748 would contain standards for supervision and for written supervisory procedures. Written supervisory procedures and the system for applying such procedures would have to be reasonably designed to prevent and detect, insofar as practicable, violations of the applicable securities laws and regulations, including the by-laws and rules of the Exchange. A similar standard for supervision would be applicable to those entrusted with the duty to supervise others.[5]

The text of the proposed rule change is available at the Phlx or the Commission.

II. Self-Regulatory Organization's Statements of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to enhance Rule 748 and thereby provide the Exchange with better tools to monitor and enforce proper supervision. The Exchange believes that the proposed rule change should significantly strengthen the ability of the Exchange to carry out its oversight responsibilities as a self-regulatory organization, especially over branch offices of member firms conducting business away from the floor of the Exchange.

In addition, the Exchange believes that enhancements to Rule 748, such as the requirements to conduct periodic compliance meetings and office inspections and to keep records of the same, should help the Exchange carry out its compliance and surveillance functions. The proposed supervisory standards should also help both the Exchange and its members carry out their respective duties.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[6] in general, and in particular, with 6(b)(5) of the Act,[7] in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest by augmenting the supervisory procedures found in Exchange Rule 748.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at

[3] *See* Letter from Jurij Trypupenko, Director of Litigation and Operations, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission (October 11, 2000). Amendment No. 1 corrected structural errors that appeared in the proposed rule language.

[4] Exchange Rule 748, which is generally based on NYSE Rule 342, was originally filed in 1993 and amended once in 1994. *See* Securities Exchange Act Release Nos. 33303 (Dec. 8, 1993), 58 FR 65609 (Dec. 15, 1993) and 34842 (Oct. 14, 1994), 59 FR 53002 (Oct. 20, 1994).

[5] The standard for supervision and standard for written supervisory procedures found in the proposed rule change are based generally on Section 15(b)(4)(E)(i) of the Act. 15 U.S.C. 78*o*(b)(4)(E)(i).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] The Exchange notes that, although options activity and personnel (including foreign currency options) are subject to Rule 748, additional supervisory requirements apply to the trading of options. *See* Phlx Rule 1024 (regarding Conduct of Accounts For Options Trading); *see also* Phlx Rule 1025 (regarding Supervision of Accounts).

the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–00–32 and should be submitted by November 17, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–27648 Filed 10–26–00; 8:45 am]

BILLING CODE 8010–01–M

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3302]

State of Florida

As a result of the President's major disaster declaration on October 4, 2000, I find that Broward, Collier, Miami-Dade, and Monroe Counties in the State of Florida constitute a disaster area due to damages caused by severe storms and flooding beginning on October 3, 2000, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 3, 2000 and for economic injury until the close of business on July 5, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Hendry, Lee, and Palm Beach in the State of Florida may be filed until the specified date at the above location.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	7.375
Homeowners Without Credit Available Elsewhere	3.687
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	6.750
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The numbers assigned to this disaster are 330206 for physical damage and 9J3200 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 6, 2000.

Allan I. Hoberman,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–27635 Filed 10–26–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3302]

State of Florida; Amendment #1

In accordance with a notice from the Federal Emergency Management Agency, dated October 11, 2000, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on October 3, 2000 and continuing through October 11, 2000.

All other information remains the same, *i.e.,* the deadline for filing applications for physical damage is December 3, 2000 and for economic injury the deadline is July 5, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 17, 2000.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–27637 Filed 10–26–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3290]

State of Montana; Amendment #2

In accordance with a notice received from the Federal Emergency Management Agency, dated September 26, 2000, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on July 13, 2000 and continuing through September 25, 2000.

All other information remains the same, *i.e.,* the deadline for filing applications for physical damage is October 29, 2000 and for economic injury the deadline is May 30, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 6, 2000.

Allan I. Hoberman,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–27633 Filed 10–26–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3299]

State of Ohio; Amendment #1

In accordance with information received from the Federal Emergency Management Agency on October 5, 2000, the above-numbered Declaration is hereby amended to change the deadline for filing applications for physical damages as a result of this disaster from November 25, 2000 to November 27, 2000.

All other information remains the same, *i.e.,* the deadline for filing applications for economic injury is June 26, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 6, 2000.

Allan I. Hoberman,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–27634 Filed 10–26–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3303]

State of Wisconsin

Eau Claire County and the contiguous counties of Buffalo, Chippewa, Clark, Dunn, Jackson, Pepin, and Trempealeau in the State of Wisconsin constitute a disaster area due to damages caused by severe storms and flooding that occurred on September 10–11, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 4, 2000 and for economic injury until the close of business on July 5, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	7.375
Homeowners Without Credit Available Elsewhere	3.687
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	6.750
For Economic Injury:	

	Percent
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The numbers assigned to this disaster are 330306 for physical damage and 9J3300 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 5, 2000.

Charles Payne,

Acting Administrator.

[FR Doc. 00–27636 Filed 10–26–00; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

United States—Israel Free Trade Area Implementation Act; Designation of Qualifying Industrial Zones

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Under the Unites—Israel Free Trade Area Implementation Act (''the ''IFTA Act''), products of qualifying industrial zones encompassing portions of Israel and Jordan or Israel and Egypt are eligible to receive duty-free treatment. Effective upon publication of this notice, the United States Trade Representative, pursuant to authority delegated by the President, is designating the Industry and Information Technology Park Development Co. (Jordan Cyber City Co.), and the Aqaba Industrial Estate as qualifying industrial zones under the IFTA Act.

FOR FURTHER INFORMATION CONTACT: Adam Shub, Director for the Middle East and Mediterranean, (202) 395–9569, Office of USTR, 600 17th Street, NW, Washington, D.C. 20508.

SUPPLEMENTARY INFORMATION: Pursuant to authority granted under section 9 of the United States-Israel Free Trade Area Implementation Act of 1985, as amended (19 U.S.C. 2112 note), the President proclaimed certain tariff treatment for the West Bank, the Gaza Strip, and qualifying industrial zones (Proclamation 6955 of November 13, 1996 (61 FR 58761)). In particular, the President proclaimed modifications to general notes 3 and 8 of the Harmonized Tariff Schedule of the United States: (a) To provide duty-free treatment to qualifying articles that are the product of the West Bank or Gaza Strip or a qualifying industrial zone and are entered in accordance with the provisions of section 9 of the IFTA Act; (b) to provide that articles of Israel may be treated as though they were articles directly shipped from Israel for the purposes of the United States—Israel Free Trade Area Agreement (''the Agreement'') even if shipped to the United States from the West Bank, the Gaza Strip, or a qualifying industrial zone, if the articles otherwise meet the requirements of the Agreement; and (c) to provide that the cost or value of materials produced in the West Bank, the Gaza Strip, or a qualifying industrial zone may be included in the cost or value of materials produced in Israel under section 1(c)(i) of Annex 3 of the Agreement, and that the direct costs of processing operations performed in the West Bank, the Gaza Strip, or a qualifying industrial zone may be included in the direct costs of processing operations performing in Israel under section 1(c)(ii) of Annex 3 of the Agreement.

Section 9(e) of the IFTA Act defines a ''qualifying industrial zone'' as an area that ''(1) encompasses portions of the territory of Israel and Jordan or Israel and Egypt; (2) has been designated by local authorities as an enclave where merchandise may enter without payment of duty or exercise taxes; and (3) has been specified by the President as a qualifying industrial zone.'' In Proclamation 6955, the President delegated to the United States Trade Representative the authority to designate qualifying industrial zones.

On March 13, 1998 (63 FR 12572), I designated the Irbid Qualifying Industrial Zone as a qualifying industrial zone under section 9 of the IFTA Act. On March 19, 1999 (64 FR 113623), I designated the Gateway Projects Industrial Zone and the expanded Irbid Qualifying Industrial Zone as qualifying industrial zone under section 9 of the IFTA Act. On October 15, 1999 (64 FR 56015) I designated Al-Kerak Industrial Estate, the Ad-Dulayl Industrial Park, and the Al-Tajamouat Industrial City as qualifying industrial zones under section 9 of the IFTA Act.

In a agreement dated August 6, 2000, the Government of Israel and the Government of the Hashemite Kingdom of Jordan agreed to the creation of two additional Qualifying Industrial Zones: Industry and Information Technology Park Development Co. (Jordan Cyber City Co.), and the Aqaba Industrial Estate. These zones encompass areas under the customs control of the respective Governments. The Government of Israel and the Government of Jordan further agreed that merchandise may enter these areas without payment of duty or excise taxes. Accordingly, the Industry and Information Technology Park Development Co. (Jordan Cyber City Co.), and the Aqaba Industrial estate meet the criteria under paragraphs 9(e)(1) and (2) of the IFTA Act.

Therefore, pursuant to the authority delegated to may by the President in Proclamation 6955, I hereby designate the Industry and Information Technology Park Development Co. (Jordan Cyber City Co.), and the Aqaba Industrial Estate as qualifying industrial zones under section 9 of the IFTA Act, effective upon the date of publication of this notice, applicable to goods shipped from these Qualifying Industrial Zones after such date.

Dated: October 24, 2000.

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 00–27702 Filed 10–26–00; 8:45 am]

BILLING CODE 3901–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–210]

WTO Consultations Regarding Belgium—Measures Affecting Imported Rice

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on October 12, 2000, the United States requested consultations with Belgium under the Marrakesh Agreement Establishing the World Trade Organization (WTO), regarding Belgium's administration of laws and regulations establishing the customs duties applicable to rice imported from the United States. Since July 1997, Belgian customs authorities have established customs values and duties for rice by using reference prices, resulting in an assessment of duties in amounts that appear to exceed the duty required by Headnote 7 of the Schedule of Specific Commitments of the European Communities and Their Member States LXXX. Belgium's administration of its tariff regime for rice, moreover, has contributed to substantial uncertainty regarding the rate of duty that will be applicable to shipments of imported rice. The United States considers that Belgium's measures relating to imported rice appear to contravene Articles I, II, VII, VIII, X and XI of the General Agreement

on Tariffs and Trade 1994 (GATT). In addition, Belgium's administration of its customs regime for imported rice appears to be inconsistent with Belgium's obligations under the Agreement on Implementation of Article VII of the GATT 1994 (''Customs Valuation Agreement''), the Agreement on Technical Barriers to Trade, and the Agreement on Agriculture. Pursuant to Articles 1 and 4.3 of the WTO Dispute Settlement Understanding (''DSU''), such consultations are to take place within a period of 30 days from the date of the request, or within a period otherwise mutually agreed between the United States and Belgium. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before November 25, 2000 to be assured of timely consideration by USTR.

ADDRESSES: Submit comments to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, 20508, Attn: Belgium Rice Dispute. Telephone: (202) 395–3582.

FOR FURTHER INFORMATION CONTACT: James M. Lyons, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–3582.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide an earlier opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding. If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the United States

The United States considers that Belgium's administration of its laws and regulations establishing the customs duties applicable to rice imported from the United States appears to be inconsistent with its WTO obligations. Belgian customs authorities have established customs values and import duties using reference prices without consideration of either the value or characteristics of the particular rice shipments involved. Moreover, the measures employed by Belgian authorities appear to have been applied in a manner that discriminates against rice imported from the United States. The Belgian measures also appear to have restricted imports of rice into Belgium.

The United States also considers that Belgium has failed to comply with the requirements of Articles I, II, VII, VIII, and X of the GATT 1994, Articles 1–6, 7, 10, 14, 16, and Annex I of the Customs Valuation Agreement, and Articles 2, 3, 5, 6, 7, and 9 of the Agreement on Technical Barriers to Trade.

In addition, Belgium appears to be restricting imports in a manner that would be inconsistent with GATT Articles I and XI and Articles 4 of the Agreement on Agriculture.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–210, Belgium—Measures Affecting Imports of Rice) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 00–27703 Filed 10–26–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST Docket No. OST–2000–7538]

Test Plan for Determining Potential for Interference From Ultra-wideband Devices (UWB) to Global Positioning System (GPS) Receivers; Response to Comment

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Response to comment.

SUMMARY: DOT announced a test program to begin to acquire data on the potential for interference to GPS systems from UWB signals, and sought comment thereon. Only one comment was received, which warrants additional explanation of, but no changes to, the test program.

FOR FURTHER INFORMATION CONTACT: Sally L. Frodge, Radionavigation and Positioning , P–7, (202) 366–4894

SUPPLEMENTARY INFORMATION: The Department of Transportation (DOT) became aware last year of the potential for interference to the Global Positioning System (GPS) and other communications, navigation, and surveillance systems, including actively used aviation systems, from ultra-wideband (UWB) signals. Due to the lack of technical data on interference available at that time, DOT decided to

initiate a limited testing program to begin to explore the interference potential of UWB to GPS. Working with the National Telecommunications and Information Administration, the Federal Aviation Administration, the Interdepartment Radio Advisory Committee, RTCA, Inc., and others, a test plan was devised to develop data in a technically sound and controlled manner. The Department contracted with Stanford University to perform the tests. In addition, because of the potential for wide public and industry interest in this matter, the Department distributed the test plan broadly and formally solicited comment on the plan through a notice in the **Federal Register**. 65 FR 38874 (June 22, 2000). Only one party submitted comments in response to this notice—Time Domain Corporation (TDC).

TDC criticized the test plan and concluded that it would not produce valid data about the potential for interference from UWB signals. DOT appreciates the TDC comments. Although DOT disagrees with TDC's assessment of the efficacy of the test plan, it is clear that additional clarification of certain points in the plan description and an explanation of the rationale for the plan's basic approach are warranted. DOT remains confident that the test plan is methodologically sound and will develop data that will help support a determination about whether and to what extent UWB emissions will interfere with GPS applications.

DOT's complete response will be sent to TDC, and to other interested parties upon request. DOT will provide all data and analyses available from the test program to the FCC by October 30, 2000, the filing date for test results in FCC ET Docket No. OST–98–153. The test program will be incomplete at that time and further results will continue to be developed into the first quarter of 2001.

Dated: October 19, 2000.

Joseph Canny,

Deputy Assistant Secretary for Navigation Systems Policy.

[FR Doc. 00–27645 Filed 10–26–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Hillsborough and Rockingham Counties, NH

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) is being prepared for a proposed highway project in Hillsborough and Rockingham Counties, New Hampshire. A Notice of Intent for the project was previously published on February 21, 1992. Subsequently the project was put on hold pending development of a Statewide Transportation Model.

FOR FURTHER INFORMATION CONTACT: Mr. William F. O'Donnell, P.E., Environmental Program Manager, Federal Highway Administration, 279 Pleasant Street, Suite 204, Concord, New Hampshire, 03301–7502, Telephone: (603) 228–0417, or Mr. William R. Hauser, Administrator, Bureau of Environment, New Hampshire Department of Transportation, P.O. Box 483, John O. Morton Building, Concord, New Hampshire 03302–0483, Telephone: (603) 271–3226.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New Hampshire Department of Transportation (NHDOT), is in the process of preparing an environmental impact statement (EIS) for a proposal for construction on a section of an existing highway facility (I–93 extending from the Massachusetts/New Hampshire State Line in Salem to just south of Exit 6 in Manchester) that serves as a major transportation link for the State of New Hampshire.

The proposed action would relieve traffic congestion, reduce travel time, improve safety and accommodate projected increases in traffic demand.

Alternatives to be considered include (1) taking no action; (2) upgrading the existing route (approximately 18 miles in length) to add capacity; (3) constructing high occupancy vehicle lanes, as well as other Transportation Demand Management (TDM) measures such as carpool parking lots; (4) constructing mass transportation facilities in or adjacent to the existing corridor; and (5) combinations of these alternatives. Various designs of grade, alignment, geometry and access will be evaluated. An Advisory Task Force has been established with representation from the regional planning agencies, state and local officials, business and industry and local citizens.

Letters describing the proposed action and soliciting comments were previously sent to appropriate federal, state and local agencies, and to private organizations and citizens who have interest in this proposal. Public informational, community and Advisory Task Force meetings have been held in study area and will continue as the project progresses, in order to include public input in the project development process. A public hearing will be held following distribution of the Draft Environmental Impact Statement (DEIS). Public notice will be given regarding the time and location of this hearing. The DEIS will be available for review and comment by the public and interested agencies prior to the public hearing.

Because this project has been on hold for a substantial period of time, a second formal scoping meeting will be held at 4:00 pm. on December 6, 2000, the 3rd floor Auditorium of the University of NH-Manchester Campus, 3000 Commercial Street in Manchester, New Hampshire. The purpose of this meeting is to (1) reaffirm the limits of the project study area; (2) refine the study framework and the impacts to be analyzed; and (3) redefine a reasonable range of alternatives to be considered.

Agencies participating as cooperating agencies are the U.S. Army Corps of Engineers (ACOE), the U.S. Environmental Protection Agency (EPA), the New Hampshire State Historic Preservation Office (SHPO) and the New Hampshire Wetlands Bureau.

To ensure the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposal and the EIS should be directed to the FHWA or the NHDOT at the addresses provided above. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Issued on: October 20, 2000.

Kathleen O. Laffey,

Division Administrator, Concord, New Hampshire.

[FR Doc. 00–27669 Filed 10–26–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Rutland County, VT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an

environmental impact statement is no longer being prepared for a previously proposed highway project [FEGC 419–3(44)] in Rutland County, Vermont.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Sikora, Jr., FHWA Environmental Program Manager, P.O. Box 568, Montpelier, Vermont 05601, telephone: (802) 828–4423; or David J. Scott, P.E., Director of Project Development, Vermont Agency of Transportation, National Life Building, Drawer 33, Montpelier, Vermont 05633–5001, telephone: (802) 828–2663.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare an Environmental Impact Statement for a bypass or upgrade of U.S. Routes 4 and 7 in Rutland, Vermont, was published by FHWA in the March 22, 1993 **Federal Register**. A Notice of Availability for the Draft Environmental Impact Statement (DEIS) for the proposed project was issued in the December 19, 1997 **Federal Register**. The DEIS was circulated with the comment period ending on March 6, 1998.

Because of the many environmental issues associated with the preferred alternative, the Vermont Legislature terminated the environmental impact study for the project in Section 1(c)(2) of Act 156 of the 1999–2000 Legislative Session. Accordingly, FHWA has determined that a Final Environmental Impact Statement will not be prepared. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on October 19, 2000.

Kenneth R. Sikora, Jr.,

Environmental Program Manager, Montpelier, Vermont.

[FR Doc. 00–27603 Filed 10–26–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33949]

Albany & Eastern Railroad Company—Acquisition and Operation Exemption—Union Pacific Railroad Company

Albany & Eastern Railroad Company (AERC), a Class III carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire by lease from Union Pacific Railroad Company (UP) and operate the Mill City Branch extending from milepost 689.64, at Page, and milepost 725.71, at Mill City, a distance of 48.57 miles in Marion and Linn Counties, OR (line).[1] AERC will replace the Willamette Valley Railway Company (WVRY) as the lessee and operator of the line.[2]

The transaction is expected to be consummated on or after October 20, 2000.

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. 33949, 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 Fritz R. Kahn, Esq., Fritz R. Kahn, P.C., 1920 N Street, N.W., 8th Floor, Washington, DC 20036.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: October 19, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–27561 Filed 10–26–00; 8:45 am]

BILLING CODE 4915–00–P

[1] The line serves the intermediate stations of Lebanon, Crabtree, and Lyons, OR. The verified notice indicates that a milepost equation near Tallman, OR, 684.87=697.37, makes the line 12.50 miles longer than would appear from the terminal mileposts.

[2] WVRY was authorized to lease and operate the line pursuant to *Willamette Valley Railway Company—Acquisition, Lease and Operation Exemption—Southern Pacific Transportation Company,* Finance Docket No. 32249 (ICC served Mar. 5, 1993).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33947]

Wisconsin Great Northern Railroad, Inc.—Operation Exemption—State of Wisconsin and Washburn County Transit Commission

Wisconsin Great Northern Railroad, Inc. (WGNR), a noncarrier, has filed a verified notice of exemption (notice) under 49 CFR 1150.31 to operate a 19.48-mile rail line (line) in Washburn County, WI, owned by the State of Wisconsin and the Washburn County Transit Commission. The line extends between milepost 80.8, at or near Spooner, and milepost 96.0, at a point of connection with Wisconsin Central, Ltd (WC), at Hayward Junction, including approximately .8 miles of incidental trackage rights over WC's line between milepost 95.2 and milepost 96.0.[1]

The transaction is expected to be consummated no earlier than the October 20, 2000 effective date of the exemption.

If the 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 reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33947, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, Jr., Esq., McFarland & Herman, 20 North Wacker Drive, Suite 1330, Chicago, IL 60606–2902.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: October 19, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–27560 Filed 10–26–00; 8:45 am]

BILLING CODE 4915–00–P

[1] The line is a continuous rail line consisting of two segments: (1) Between milepost 80.8, at or near Spooner, and milepost 87.6, at or near Trego, a distance of 6.8 miles; and (2) between milepost 83.32, at or near Trego, and milepost 96.0, at Hayward Junction, a distance of 12.68 miles. WGNR currently provides rail passenger service over the line.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Office of the General Counsel; Appointment of Members of the Legal Division to the Performance Review Board

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Order No. 21 (Rev. 4), pursuant to the Civil Service Reform Act, I have appointed the following persons to the

Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Chairperson, Judith C. Dunn, Deputy Chief Counsel (Operations);
2. Thomas M. McGivern, Counselor to the General Counsel;
3. Cynthia J. Mattson, Deputy Division Counsel (Large and Mid-Size Business);
4. Martha Sullivan , Deputy Division Counsel ι2 (Small Business/Self Employed);
5. Richard J. Mihelcic, Associate Chief Counsel (Finance and Management);
6. Heather C. Maloy, Associate Chief Counsel (Income Tax and Accounting);
7. Joseph F. Maselli, Area Counsel (Large and Mid-Size Business)(Area 2)(Heavy Manufacturing, Construction and Transportation).

In addition, I hereby appoint the following persons to serve on the Performance Review Board for the Deputies Chief Counsel:

8. Robert E. Wenzel, Deputy Commissioner of Internal Revenue; and
9. Eric Solomon, Acting Deputy Assistant Secretary (Tax Policy).

This publication is required by 5 U.S.C. 4314(c)(4).

Dated: October 23, 2000.

Stuart L. Brown,

Chief Counsel, Internal Revenue Service.

[FR Doc. 00–27694 Filed 10–26–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds—Terminations; Reliance Insurance Company, Reliance Insurance Company of Illinois, Reliance National Indemnity Company, Reliance Surety Company, United Pacific Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 2 to the Treasury Department Circular 570; 2000 Revision, published June 30, 2000, at 65 FR 40868.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6507.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificates of Authority issued by the Treasury to the above named Companies, under the United States Code, Title 31, Sections 9304–9308, to qualify as acceptable sureties on Federal bonds are terminated effective immediately.

The Companies were last listed as acceptable sureties on Federal bonds at 65 FR 40896, 40897, and 40903, June 30, 2000.

With respect to any bonds, including continuous bonds, currently in force with above listed Companies, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00536–5.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: October 16, 2000.

Judith R. Tillman,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 00–27672 Filed 10–24–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 706–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706–A, United States Additional Estate Tax Return.

DATES: Written comments should be received on or before December 26, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: United States Additional Estate Tax Return.

OMB Number: 1545–0016.

Form Number: Form 706–A.

Abstract: Form 706–A is used by individuals to compute and pay the additional estate taxes due under Internal Revenue Code section 2032A(c) for an early disposition of specially valued property or for an early cessation of a qualified use of such property. The IRS uses the information to determine that the taxes have been properly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 180.

Estimated Time Per Respondent: 8 hr., 11 min.

Estimated Total Annual Burden Hours: 1,474.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use

of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 17, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–27691 Filed 10–26–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of South Florida Citizen Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the South Florida Citizen Advocacy Panel will be held in Sunrise, Florida.

DATES: The meeting will be held Friday, November 17, 2000 and Saturday, November 18, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Ferree at 1–888–912–1227, or 954–423–7973.

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 open meeting of the Citizen Advocacy Panel will be held Friday, November 17, 2000 from 6 p.m. to 9 p.m. and Saturday, November 18, 2000 from 9 a.m. to 12 p.m., in Room 225, CAP Office, 7771 W. Oakland Park Blvd., Sunrise, Florida 33351. The public is invited to make oral comments. Individual comments will be limited to 10 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 954–423–7973, or write Nancy Ferree, CAP Office, 7771 W. Oakland Park Blvd. Rm. 225, Sunrise, FL 33351. Due to limited conference space, notification of intent to attend the meeting must be made with Nancy Ferree. Ms. Ferree can be reached at 1–888–912–1227 or 954–423–7973.

The agenda will include the following: various IRS issue updates and reports by the CAP sub-groups.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 23, 2000.

John J. Mannion,

Program Manager, Taxpayer Advocate Service.

[FR Doc. 00–27692 Filed 10–26–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open meeting of Citizen Advocacy Panel, Midwest District

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice.

SUMMARY: A meeting of the Midwest Citizen Advocacy Panel will be held in Omaha, Nebraska.

DATES: The meeting will be held Thursday, November 16, 2000, and Friday, November 17, 2000.

FOR FURTHER INFORMATION CONTACT: Sandra McQuin at 1–888–912–1227, or 414–297–1604.

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 open meeting of the Citizen Advocacy Panel (CAP) will be held Thursday, November 16, 2000, from 9:00 a.m. to 4:00 p.m. and Friday, November 17, 2000, from 9:00 a.m. to noon at the W Dale Clark Main Library, 215 South 15th Street, Omaha, NE 68102. The Citizen Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. Written comments can be submitted to the panel by fax to (414) 297–1623, or by mail to Citizen Advocacy Panel, Mail Stop 1006 MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221.

The Agenda will include the following: Reports by the CAP sub-groups, presentation of taxpayer issues by individual members, discussion of issues, and the CAP office report.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 23, 2000.

John J. Mannion,

Program Manager, Taxpayer Advocate Service.

[FR Doc. 00–27693 Filed 10–26–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans Advisory Committee on Rehabilitation (VACOR); Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Veterans' Advisory Committee on Rehabilitation (VACOR), authorized by Public Law 96–466, Subsection 1521, will be held on November 13 through 16, 2000. The meeting will be held at VA Central Office, 810 Vermont Avenue NW., Washington, DC 20006.

The meeting schedule is as follows:

Date	Room #	Time
November 13th	1010	9 a.m. to 4 p.m.
November 14th and 15th.	732	9 a.m. to 4 p.m.
November 16th	1046	9 a.m. to 12 p.m.

The purpose of the meeting is to review the quality of the services which the Department of Veterans Affairs provides to disabled veterans who participate in VA sponsored programs of rehabilitation. In addition, VACOR will conduct an internal business meeting focusing on a review of past activities and the development of future initiatives.

On November 13th, the meeting will begin with opening remarks and an overview by Mr. Richard K. Pimentel, Committee Chairman. The Committee will receive a briefing on President Clinton's executive order call on agencies to hire 100,000 people with disabilities over the next five years. The afternoon session will be devoted to discussing recruitment initiatives needed to assist veterans with disabilities obtain employment with regard to the executive order.

On November 14, the Committee will receive a presentation on employment barriers encountered by veterans with disabilities when seeking employment. The afternoon session will be devoted to identifying methods and tools needed to remove the barriers, giving specific attention to assisting the most seriously disabled veterans.

The November 15th meeting will encompass a discussion of medical and rehabilitation integration within the Department of Veterans Affairs in

comparison to the private sector. The afternoon session will consist of a continuation of the morning's discussion, specifically vocational rehabilitation's early intervention with the medical centers in the early stages of a veteran's injury or trauma.

On November 16th, the meeting will include a review of past unfinished business, recommendations for program changes, and a discussion of future meeting sites and future agenda topics.

Members of the general public may attend these meetings and join in the discussion, subject to the instructions of the Chair. If additional information is needed, please contact Jada G. Jones, Employment Specialist, Department of Veterans Affairs, at (202) 273–7425.

Dated: October 16, 2000.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 00–27627 Filed 10–27–00; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 65, No. 209

Friday, October 27, 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 AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 99–038–5]

Tuberculosis in Cattle, Bison, and Captive Cervids; State and Zone Designations

Correction

In rule document 00–27054 beginning on page 63502 in the issue of Monday, October 23, 2000, make the following correction:

§77.11 [Corrected]

On page 63521, in the second column, in §77.11(a), in the second line, ''None.'' should read ''Michigan.''

[FR Doc. C0–27054 Filed 10–26–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army

Availability of the Revised Draft Environmental Impact Statement (DEIS) for the Proposed Sauquoit Creek Flood Control Project at Whitesboro, NY

Correction

In notice document 00–27068 appearing on page 63064 in the issue of Friday, October 20, 2000, make the following corrections:

1. On page 63064, in the first column, in the last line, ''(202) 264–1060'' should read ''(212) 264–1060''.

2. On the same page, in the second column, in the second line, ''(202) 264–9846'' should read ''(212) 264–9846''.

[FR Doc. C0–27068 Filed 10–24–00; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[WH–FRL–6888–8]

RIN 2040–AB75

National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring

Correction

In proposed rule document 00–27034 beginning on page 63027 in the issue of Friday, October 20, 2000, make the following corrections:

1. On page 63032, in Table 4, in the last line of the table's third column, ''1.01×10^{-5}'' should read ''1.01×10^{-4}''.

2. On the same page, in the same table, in the last line of the table's fourth column, ''1.06×10^{-5}'' should read ''1.06×10^{-4}''.

[FR Doc. C0–27034 Filed 10–26–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
October 27, 2000

Part II

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Parts 2510 and 2570

Plans Established or Maintained Under or Pursuant to Collective Bargaining Agreements Under Section 3(40)(A) of ERISA; Proposed Rule

Procedures for Administrative Hearings Regarding Plans Established or Maintained Pursuant to Collective Bargaining Agreements Under Section 3(40)(A) of ERISA; Proposed Rule

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

RIN 1210–AA48

Plans Established or Maintained Under or Pursuant to Collective Bargaining Agreements Under Section 3(40)(A) of ERISA

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Proposed rule.

SUMMARY: This document contains a proposed regulation under the Employee Retirement Income Security Act of 1974, as amended, (ERISA or the Act), setting forth specific criteria that, if met and if certain other factors set forth in the proposed regulation are not present, constitute a finding by the Secretary of Labor (the Secretary) that a plan is established or maintained under or pursuant to one or more collective bargaining agreements for purposes of section 3(40) of ERISA. Employee welfare benefit plans that meet the requirements of the proposed regulation are excluded from the definition of ''multiple employer welfare arrangements'' under section 3(40) of ERISA and consequently are not subject to state regulation of multiple employer welfare arrangements as provided for by the Act. If adopted, the proposed regulation would affect employee welfare benefit plans, their sponsors, participants, and beneficiaries, as well as service providers to plans. Proposed regulations are being published simultaneously with this proposed regulation that set forth a procedure for obtaining a determination by the Secretary as to whether a particular employee welfare benefit plan is established or maintained under or pursuant to one or more agreements that are collective bargaining agreements for purposes of section 3(40) of ERISA. The procedure would be available only in situations where the jurisdiction or law of a state has been asserted against a plan or other arrangement that contends it meets the exception for plans established or maintained under or pursuant to one or more collective bargaining agreements.

DATES: Written comments concerning the proposed regulation must be received by December 26, 2000.

ADDRESSES: Interested persons are invited to submit written comments (preferably three copies) concerning this proposed regulation to: Pension and Welfare Benefits Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (Attention: Proposed Regulation Under Section 3(40)). All submissions will be open to public inspection at the Public Documents Room, Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Goodman, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–8671. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

The Department is proposing a regulation, based on the report of the ERISA Section 3(40) Negotiated Rulemaking Advisory Committee convened by the Department for this purpose, that would implement section 3(40) of ERISA, 29 U.S.C. 1002(40). Section 3(40)(A) defines the term multiple employer welfare arrangement (MEWA) in pertinent part as follows:

> The term ''multiple employer welfare arrangement'' means an employee welfare benefit plan, or any other arrangement (other than an employee welfare benefit plan), which is established or maintained for the purpose of offering or providing any benefit described in paragraph (1) [of section 3 of the Act] to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that such term does not include any such plan or other arrangement which is established or maintained—(i) under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements. * * *

This provision was added to ERISA by the Multiple Employer Welfare Arrangement Act of 1983, Sec. 302(b), Pub. L. 97–473, 96 Stat. 2611, 2612 (29 U.S.C. 1002(40)), which also amended section 514(b) of ERISA. Section 514(a) of the Act provides that state laws which relate to employee welfare benefit plans are generally preempted by ERISA. Section 514(b) sets forth exceptions to the general rule of section 514(a) and subjects employee welfare benefit plans that are MEWAs to various levels of state regulation depending on whether or not the MEWA is fully insured. Sec. 302(b), Pub. L. 97–473, 96 Stat. 2611, 2613 (29 U.S.C. 1144(b)(6)). [1]

The Multiple Employer Welfare Arrangement Act was introduced to counter what the Congressional drafters termed abuse by the ''operators of bogus 'insurance' trusts.'' 128 Cong. Rec. E2407 (1982) (Statement of Congressman Erlenborn). In his comments, Congressman Erlenborn noted that certain MEWA operators had been successful in thwarting timely investigations and enforcement activities of state agencies by asserting that such entities were ERISA plans exempt from state regulation by the terms of section 514 of ERISA. The goal of the bill, according to Congressman Erlenborn, was to remove ''any potential obstacle that might exist under current law which could hinder the ability of the States to regulate multiple employer welfare arrangements to assure the financial soundness and timely payment of benefits under such arrangements.'' *Id.* This concern was also expressed by the Committee on Education and Labor in the Activity Report of the Pension Task Force (94th Congress, 2d Session, 1977), cited by Congressman Erlenborn:

> It has come to our attention, through the good offices of the National
>
> Association of State Insurance Commissioners, that certain entrepreneurs have undertaken to market insurance products to employers and employees at large, claiming these products to be ERISA covered plans. For instance, persons whose primary interest is in the profiting from the provision of administrative services are establishing insurance companies and related enterprises. The entrepreneur will then argue that his enterprise is an ERISA benefit plan which is protected under ERISA's preemption provision from state regulation.

[1] The Multiple Employer Welfare Arrangement Act of 1983 added section 514(b)(6) which provides a limited exception to ERISA's preemption of state laws that allows states to exercise regulatory authority over employee welfare benefit plans that are NEWAs. Section 514(b) provides, in relevant part, that:

(6)(A) Notwithstanding any other provision of this section—(i) in the case of an employee welfare benefit plan which is a multiple employer welfare arrangement and is fully insured (or which is a multiple employer welfare arrangement subject to an exemption under subparagraph (B)), any law of any State which regulates insurance may apply to such arrangement to the extent that such law provides)—

(I) standards, requiring the maintenance of specified levels of reserves and specified levels of contributions, which any such plan, or any trust established under such a plan, must meet in order to be considered under such law able to pay benefits in full when due, and

(II) provisions to enforce such standards, and (ii) in the case of any other employee welfare benefit plan which is a multiple employer welfare arrangement, in addition to this title, any law of any State which regulates insurance may apply to the extent not inconsistent with the preceding sections of this title.

Thus, an employee welfare benefit plan that is a MEWA remains subject to state regulation to the extent provided in section 514(b)(6)(A). ERISA preemption applies only to MEWAs which are employee welfare benefit plans.

Id. As a result of the addition of section 514(b)(6), certain state laws regulating insurance may apply to employee welfare benefit plans that are MEWAs. However, the definition of a MEWA in section 3(40) provides that an employee welfare benefit plan is not a MEWA if it is established or maintained under or pursuant to an agreement or agreements which the Secretary finds to be a collective bargaining agreement. Such plans, therefore, are not subject to state insurance regulation under section 514(b)(6).

While the Multiple Employer Welfare Arrangement Act of 1983 significantly enhanced the states' ability to regulate MEWAs, problems in this area persist. Among other things, the exception for collectively bargained plans contained in section 3(40) is now being exploited by some MEWA operators who, through the use of sham unions and collective bargaining agreements, market fraudulent insurance schemes under the guise of collectively bargained welfare plans exempt from state insurance regulation.[2] Another problem in this area involves the use of collectively bargained plans as vehicles for marketing health care coverage to individuals and employers with no relationship to the bargaining process or the underlying bargaining agreement.

B. The August 1995 Notice of Proposed Rulemaking

On August 1, 1995, the Department published a Notice of Proposed Rulemaking on Plans Established or Maintained Pursuant to Collective Bargaining Agreements in the **Federal Register**. (60 FR 39209). (August 1995 NPRM). The Department proposed criteria for determining whether an employee welfare benefit plan is established or maintained under or pursuant to one or more agreements that the Secretary finds to be collective bargaining agreements for purposes of section 3(40) of ERISA. The proposed approach did not have a procedure for obtaining individual findings by the Department. The Department received numerous comments on the NPRM. Commenters expressed concerns about their ability to comply with the standards set forth in the NPRM, and to obtain data necessary to establish compliance with the criteria proposed by the Department. Commenters also objected to having State regulators determine whether a particular agreement was a collective bargaining agreement.

C. Regulatory Negotiation

The Department continues to believe that regulatory guidance in this area is necessary. Based on the comments received in response to the August 1995 NPRM, the Department determined that negotiated rulemaking was an appropriate method of implementing a revised Notice of Proposed Rulemaking. On April 15, 1998, the Secretary published in the**Federal Register** (63 FR 18345) a notice of intent to establish a negotiated rulemaking advisory committee under the Negotiated Rulemaking Act. (5 U.S.C. 561 *et seq.*) (NRA). The NRA establishes a framework for the conduct of negotiated rulemaking and encourages agencies to use negotiated rulemaking to enhance the informal rulemaking process.

In September 1998, the Secretary established the ERISA Section 3(40) Negotiated Rulemaking Advisory Committee under the NRA and the Federal Advisory Committee Act (the FACA)(5 U.S.C. App. 2) (Notice of Establishment). (63 FR 5052). The Committee included a Department representative and its work has been assisted by a neutral facilitator. The Committee membership was chosen from the organizations that submitted comments on the Department's August 1995 NPRM, and from the petitions and nominations for membership received in response to the Notice of Intent. The Notice of Establishment outlined the rationale behind the final composition of the Committee. The members of the ERISA Section 3(40) Negotiated Rulemaking Advisory Committee are as follows:

Labor Unions: Kathy Krieger, American Federation of Labor and Congress of Industrial Organizations;

Multiemployer Plans: Gerald Feder (James Ray—alternate), National Coordinating Committee for Multiemployer Plans; Judith Mazo, Entertainment Industry Multiemployer Health Plans;

State Governments: Fred Nepple, National Association of Insurance Commissioners;

Employers/Management: James Kernan, The Associated General Contractors of America;

Railway Labor Act Plans: Benjamin W. Boley, National Railway Labor Conference;

Third-Party Administrators: David Livingston, TIC International Corporation;

Independent agents, brokers and advisors providing health care products and services to plans and individuals: Nancy Trenti, National Association of Health Underwriters;

Insurance carriers and managed care companies that finance and deliver health care: R. Lucia Riddle, Health Insurance Association of America;

Federal Government: Elizabeth A. Goodman, Pension and Welfare Benefits Administration.

The goal of the Committee was to reach consensus on pertinent issues and draft regulatory text for the purposes of developing a substantive rule to help the regulated community determine which plans are indeed established or maintained under or pursuant to one or more collective bargaining agreements, and therefore not subject to state regulation, under section 3(40) of ERISA. The Committee conducted eight public sessions held on October 26–27, 1998, December 16–17, 1998, February 9–10, 1999, April 20–21, 1999, July 7–8, 1999, August 25–26, 1999, October 13–14, 1999, and November 16–17, 1999. All meetings were held in Washington, D.C. and allocated time during the meetings for public participation and comment. In accordance with the FACA's requirements, minutes of all public Committee meetings have been kept in the public rulemaking record, together with the materials distributed among Committee members during such meetings and correspondence received by the Committee regarding the rulemaking. During the course of the Committee's deliberations, it received two written comments from the public. The Committee considered the comments in drafting its report and the proposed regulatory text.

Under the rules governing the negotiated rulemaking process, and in accordance with the organizational protocols adopted by the Committee, the Committee agreed to recommend to the Secretary consensus language in the form of a proposed rule developed by the Committee. Committee members agreed not to file adverse public comments on provisions of the proposed rule on which the Committee had reached consensus.

In the event that the Committee did not reach a full consensus on a proposed rule, the Committee members agreed to prepare a report to the Secretary outlining any consensus agreement reached, and summarizing the reasons for the failure to reach consensus on the complete rule. The

[2] In addition, the Department has received requests to make individual determinations concerning the status of particular plans under section 3(40). *See. e.g., Ocean Breeze Festival Park* v. *Reich,* 853 F. Supp. 906, 91 (1994), *summary judgment granted sub nom. Virginia Beach Policemen's Benevolent Association, et al.* v. *Reich,* 881 F. Supp 1059 (E.D. Va. 1995), *aff'd,* 96 F.3d 1440 (1996); *Amalgamated Local Union No. 335* v. *Gallagher,* No. 91 CIV 0193(RR) (E.D.N.Y. April 15, 1991).

Department was prepared to develop a proposed rule on its own, if the Committee could not reach consensus.

With the exception of sections E–K of the preamble, the text of the proposed rule and preamble is the Committee's consensus.

D. Description of Proposed Regulation

1. Structure of the Proposed Regulation

The proposed regulation establishes specific criteria that the Secretary finds must be present in order for one or more agreements to be collective bargaining agreements for purposes of section 3(40) of ERISA and also establishes certain criteria for determining when an employee welfare benefit plan is established or maintained under or pursuant to such an agreement or agreements for purposes of section 3(40). In drafting proposed regulatory language, the Committee took into account that section 3(40) not only requires the existence of one or more *bona fide* collective bargaining agreements, but also requires that the plan be ''established or maintained'' under or pursuant to such an agreement or agreements. The proposed regulation interprets the exception under section 3(40)(A)(i) as being limited to plans providing coverage primarily to those individuals with a nexus to the collective bargaining agreement or agreements under or pursuant to which the plan is established or maintained. Accordingly, the criteria in the proposed regulation relating to whether a plan qualifies as ''established or maintained'' are intended to ensure that the statutory exception is only available to plans whose participants are predominately the bargaining unit employees on whose behalf such benefits were negotiated and other individuals with a close nexus to the bargaining unit or to the employer(s) of the bargaining unit employees.

The proposed regulation also sets forth certain instances where, even if the specific criteria apparently are met, an entity will be deemed not to be established or maintained under or pursuant to one or more collective bargaining agreements. The proposed regulation also sets forth certain factors to be considered by a fact finder as to whether there is a *bona fide* collective bargaining relationship.

The proposed regulation would, upon adoption, constitute the Secretary's finding for purposes of determining whether a plan is established or maintained under or pursuant to one or more collective bargaining agreements pursuant to section 3(40) of ERISA. The criteria contained in the proposed regulation are designed to enable entities and state insurance regulatory agencies to determine in the first instance whether the requirements of the Act are met. Unlike the August 1995 NPRM, under certain limited circumstances an entity may elect to petition the Secretary for an individual finding. However, the Secretary will not make individual findings or determinations as to whether an entity meets the criteria of the proposed regulation unless a state's law or jurisdiction is asserted in an administrative or judicial proceeding against that particular entity. For the procedure for petitioning for an individual finding and a description of the ALJ individual finding procedure, *see Notice of Proposed Rulemaking 29 CFR 2570 Subpart G (published simultaneously).*

The principles and criteria in this proposed rule were developed solely for the purpose of determining whether or not a multiple employer welfare plan is a MEWA under section 3(40). In considering and drafting this proposed regulation, the Committee was not charged with interpreting or enforcing any other federal laws that relate to collective bargaining and employee benefits, such as the National Labor Relations Act, the Internal Revenue Code of 1986 or the Railway Labor Act. Therefore, nothing in this proposed regulation, or in any ALJ finding issued pursuant to it under the proposed rules at *29 CFR 2570 Subpart G,* is intended to determine the rights and responsibilities of any party under such other laws. In drafting the proposed regulatory language, the Committee recognized that a finding by the Secretary that a plan is maintained pursuant to a collective bargaining agreement as defined for section 3(40) of ERISA may be considered by parties applying other laws, but did not believe that such a finding here would, given the narrow focus of the proposed regulation, conclude the analysis under such other law.

2. Specific Provisions of the Proposed Regulation

Section 2510.3–40(a)—Scope and Purpose

Section (a), Scope and Purpose, states that the purpose of the proposed regulation is to set forth a finding by the Secretary that an employee welfare benefit plan is established or maintained under or pursuant to one or more collective bargaining agreements if it meets the criteria in the proposed regulation and does not come within one of the exclusions.

Section 2510.3–40(b)—Who Is Covered by the Plan

Section (b), Criteria, is divided into four parts: subparagraph (1) requires that the entity in question be an employee welfare benefit plan within the meaning of ERISA section 3(1); subparagraph (2) looks at whether the preponderance of those participants covered by the plan have a nexus to the bargaining relationships under which the plan is established or maintained; subparagraph (3) describes the characteristics of agreements that will qualify them, for purposes of section 3(40) of ERISA only, as collective bargaining agreements; and subparagraph (4) sets forth factors to be considered, again for purposes of section 3(40) only, in determining whether there is a *bona fide* collective bargaining relationship underlying the agreements pursuant to which the plan is established or maintained. If an employee welfare benefit plan meets the general criteria and is not excluded under subsection (c), then the Secretary finds that such plan is ''established or maintained under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements'' for any plan year in which it meets the criteria.

Section 2510.3–40(b)(1)—Entity Must Be a Plan

Subsection (b)(1) requires that an entity be an employee welfare benefit plan within the meaning of section 3(1) of ERISA in order to be deemed to be a plan established or maintained under or pursuant to collective bargaining.

Section 2510.3–40(b)(2)—''The Nexus Group''

Subsection (b)(2) requires that for any plan year 80% of the participants (as defined in section 3(7) of ERISA) in the plan have a nexus to the collective bargaining relationship (''the nexus group''). It also describes the categories of people who are considered to have that nexus. The numerical tests in the proposed regulation subsection (b)(2) look at individuals whose coverage is based on their employment, that is, the participants. The proposed regulation focuses on participants in order to reduce potential administrative difficulties for plans in having to account for beneficiaries (*e.g.,* spouses, dependent children, etc.) who are covered solely by virtue of their relationship to a participant. Beneficiaries are not counted to determine whether the 80% test has been met.

The nexus group includes a broad group of participants—those commonly found in traditional multiemployer welfare benefit plans, due to their connection to the plan or the collective bargaining process—among those covered in the 80% test. This is a change from the August 1995 NPRM, which focused the numerical test on those individuals covered by the collective bargaining agreement.

In drafting proposed regulatory text, the Committee took into account that there are other categories of individuals, not specifically identified in subsection (b)(2), who traditionally may be covered by multiemployer plans because of their relationship to the plan or the sponsoring unions or employers, such as employees of an industry credit union or an administrative entity set up to collect and reconcile employer contributions and related payments. Based on the information available to the Committee, the number of such participants in any given situation is likely to be so small compared to the plan's total participant population that they would fit well within the 20% allowance for coverage of non-nexus people. Because plans are not likely to run the risk of being deemed to be a MEWA by virtue of covering these incidental categories, it did not appear necessary to attempt to promulgate an exhaustive list of such individuals for inclusion in the nexus group. However, the Department invites public comment identifying any other categories of participants who similarly have historically been covered under one or more multiemployer plans because of their traditional and close connection to the bargaining relationship, the bargaining unit or the employers that contribute to the plan, and whose participation is material enough to warrant specific inclusion in the nexus group.

The Committee recommended a 20% margin for coverage of non-nexus people, even though it understood that the percentage of participants in collectively bargained plans who are not within one of the nexus categories is rarely likely to be that high. The Committee believed that this percentage gives plans enough leeway so that they will not need to worry about detailed head counts, while offering coverage to, for instance, a limited number of union members who have not been covered by collective bargaining agreements because the union has not yet been recognized as their bargaining representative, or to parties providing services to the plan for whom health coverage under the plan is part of their compensation, such as the plan's legal counsel, administrator, or persons providing computer maintenance or other contract services.

Whether a plan or other arrangement meets the criteria for the finding that it is established or maintained under or pursuant to a collective bargaining agreement within the meaning of section 3(40) is to be determined based on its characteristics 'for a plan year.' A plan's status 'for a plan year' is to be determined as of a point or points during the plan year that is reasonably representative with respect to that plan.

Unlike the 1995 NPRM, the proposed regulation does not prescribe the specific measurement dates. Among other things, the Committee believed that formal procedures governing the calculation of the level of non-nexus participation are not needed under this proposal. That is because the Committee expected that few multiemployer plans would even cover people who do not fit any of the nexus categories and that plans should not find it difficult to identify and keep track of the small number of non-nexus participants. Moreover, the Committee recognized that, given the wide variety of employment patterns in the industries covered by multiemployer plans and the potential that unforeseen events could distort the coverage picture temporarily, no single set of fixed determination dates was likely to capture a fair picture for the universe of affected plans.

In the Committee's judgment, attempting to prescribe specific times and procedures for making the 80% coverage determination could place undue emphasis on the mechanics of the head count, and would make the regulation more complex and costly to administer, since the rule should have to include a wide range of variations and alternatives. At the same time, mechanical rules broad enough to take care of the spectrum of plans that are undeniably maintained pursuant to collective bargaining would lend themselves to relatively easy evasion. MEWA operators could manipulate participants' coverage dates to make it appear that the test for collective bargaining status was met on the official measuring date.

Public comments, plus specific suggestions, are invited on whether the regulation should be more precise as to the 'for a plan year' determination.

Section 2510.3–40(b)(2)(i)—Participants Covered by the Collective Bargaining Agreement

The primary component of the nexus group is individuals employed under one or more of the collective bargaining agreements pursuant to which contributions are made or coverage is provided under the plan. Determining who is an employed individual relies on general common law principles.

Section 2510.3–40(b)(2)(ii)—Retirees

The nexus group includes retired participants who either (a) participated in the welfare benefit plan at least five of the last 10 years preceding their retirement, or (b) are receiving benefits under a multiemployer pension plan maintained under the same agreement as the welfare benefit plan and had at least five years of service (or the equivalent for plans that determine pension eligibility or entitlement in a different manner) under that employee pension benefit plan.

Section 2510.3–40(b)(2)(iii)—Statutory Extended Coverage

The nexus group includes participants who were active participants and are on extended coverage under the plan under legally required coverage extensions. This includes people whose coverage is based on the continuation coverage requirements of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), the Family and Medical Leave Act and the Uniformed Services Employment and Reemployment Rights Act. It also includes coverage required to be provided by a court, arbitration or administrative decision and coverage that remains in place, pursuant to the National Labor Relations Act, or other applicable law, after expiration of a collective bargaining agreement.

Section 2510.3–40(b)(2)(iv)—Extended Coverage Under the Terms of the Plan

Participants with extended coverage under the terms of the plan (even where the extended coverage opportunity is not required by statute) are also in the nexus group. This includes common types of coverage extensions following a period of eligibility based on active participation, such as self-payment, hour bank, long- or short-term disability, furlough, or temporary unemployment, as long as the participant is not required to pay more than the applicable COBRA premium for the coverage in question.

Section 2510.3–40(b)(2)(v)—Reciprocity Agreements

The nexus group includes participants who are covered under the plan pursuant to a reciprocal agreement with one or more other multiemployer welfare plans. Reciprocal agreements are most common in construction and other industries where union-represented workers tend to travel from

area to area, following the availability of jobs. They enable workers to establish or maintain coverage under the plan in their home jurisdiction based on work in another plan's jurisdiction, under a collective bargaining agreement that requires contributions to that other plan.

However, subparagraph (b)(2)(v), does not permit a plan to circumvent the percentage test by arranging reciprocal agreements with other plans to shield each plan's non-nexus individuals. Participants covered under reciprocal agreements are considered part of the nexus group for the ''receiving'' plan only if they are part of the nexus group under the ''sending'' plan. The percentage limitations of the rule may not be avoided by purporting to cover individuals under ''reciprocal'' agreements who do not have a nexus (as defined under 2510.3–40(b)(2)) to the ''sending'' plan.

Section 2510.3–40(b)(2)(vi)—Union, Plan and Fund Employees

Employees of the sponsoring labor organization, the welfare benefit plan or trust itself and related employee benefit plans, are in the nexus group as well.

Section 2510.3–40(b)(2)(vii)—''Bargaining Unit Alumni''

Also in the nexus group are so-called ''bargaining unit alumni,'' that is, participants who once were covered under the plan due to their employment under a collective bargaining agreement, but who (1) are no longer working in a bargaining-unit capacity; (2) work for one or more employers that are parties to the agreement; and (3) are covered under the plan on terms that are generally no more favorable than those that apply to the bargaining-unit employees. This includes former union-represented workers who are now in a management capacity.

Section 2510.3–40(b)(2)(viii)—''Special-Class Participants''

The nexus group includes so-called ''special-class participants,'' that is, individuals who are neither union-represented nor bargaining-unit alumni, but who are employed by employers that contribute to the plan for their union-represented employees pursuant to the collective bargaining agreement, and who are covered under the plan on terms that are generally no more favorable than those that apply to the bargaining-unit personnel. Some multiemployer plans traditionally have allowed contributing employers to cover their office staff, along with their union-represented workforce. Special-class participants totaling no more than 10% of the total plan participant population are counted in the nexus group. A plan will not be deemed to be a MEWA merely because it covers additional special-class participants above that 10% level, so long as the additional special-class participants, together with any other participants who are not in the nexus group, constitute no more than 20% of the total plan participant population.

The Committee believed that special-class participants ordinarily would constitute no more than 10% of the plan's total participant population, and so included only a 10% allowance for them in the nexus group. However, the Committee also recognized that the 10% allowance might not be adequate in some situations, because, for example, the ratio of signatory employers' supervisors and office workers to their union-represented counterparts is subject to fluctuation, particularly in certain industries. Part of the reason that the proposed regulation allows plans a 20% margin for coverage of people who are neither covered by a collective bargaining agreement nor included in one of the other nexus categories was the potential for special class participants in excess of the 10% nexus number.

Section 2510.3–40(b)(2)(ix)—Individuals Covered by the Railway Labor Act

The nexus group includes participants who are, or were for a period of at least three years, employed under one or more agreements under the Railway Labor Act between or among one or more ''carriers'' (including ''carriers by air'') and one or more ''representatives'' of employees for collective bargaining purposes and as defined by the Railway Labor Act, 29 U.S.C. 151 *et seq.*, providing for such individuals' current or subsequent participation in the plan, or providing for contributions to be made to the plan by such carriers.

Section 2510.3–40(b)(2)(x)—Licensed Marine Pilots

Individuals who are licensed marine pilots operating in United States ports as a state-regulated enterprise are included as part of the nexus group with respect to a qualified merchant marine plan, as defined in section 415(b)(2)(F) of the Internal Revenue Code of 1986.

Section 2510.3–40(b)(3)—Nature of the Collective Bargaining Agreement

Subsection (b)(3) requires that the plan be incorporated or referenced in at least one written agreement between at least one employee organization and two or more employers. The written agreement must satisfy five listed criteria. The Committee recognized that the substance of the agreement among the parties to collective bargaining often is embodied in more than one document, and not every aspect of their agreement necessarily is reduced to writing. The Committee also recognized that a multiemployer plan often is incorporated or referenced in more than one collective bargaining agreement among different employers and employee organizations, including but not limited to project labor agreements, labor harmony agreements, ''me-too'' or ''one-line'' agreements. For these reasons, the term ''agreement'' necessarily includes the constellation of documents and understandings that make up the parties' contract, and it automatically includes multiple agreements, where applicable.

Section 2510.3–40(b)(3)(i)

The first criterion for an agreement under subsection (b)(3) is that the agreement is the product of a *bona fide* collective bargaining relationship. Subsection (b)(4), as described *infra*, sets forth a nonexhaustive list of factors relevant for determining whether such a relationship in fact exists.

Section 2510.3–40(b)(3)(ii)

The second criterion under subsection (b)(3) is that the agreement in question identifies employers and employee organization(s) that are parties to and bound by the agreement. The Committee took into consideration that, in many industries, employers bargain collectively through multiemployer associations, and the resulting agreement may identify the association, as agent for the many employers for which the association bargained. Also, many employers routinely adopt the master agreement by reference in their collective bargaining agreements to what are often referred to as ''short-form agreements'' or ''binders.'' Additionally, a written collective bargaining agreement may bind employers who are neither signatory to that agreement nor identified in any document, but who are nonetheless legally bound. Therefore, the criterion that the agreement identify the parties may be satisfied even if not every one of the employers who are bound by the agreement to contribute to the plan is named specifically.

Section 2510.3–40(b)(3)(iii)

The third criterion is that the agreement identify the personnel, job classifications and/or work jurisdiction covered by the agreement. In the Committee's experience, collective bargaining agreements generally delineate the personnel covered by the

agreement by reference to the trade, craft or class, industry or geographic area in which the employer operates or the job classifications utilized by the employer.

Section 2510.3–40(b)(3)(iv)

The fourth criterion is that the agreement provides for terms and conditions of employment in addition to coverage under, or contributions to, the plan.

Section 2510.3–40(b)(3)(v)

The fifth criterion is that the agreement is not unilaterally terminable or automatically terminated solely for nonpayment of benefits under, or contributions to, the plan. This criterion is met even if the plan trustees have authority to terminate a delinquent employer's ability to contribute to or otherwise participate in the plan, as long as the underlying collective bargaining agreement remains in full force and effect with respect to that employer. Similarly, the fact that the employee organization may have the right to suspend performance of its obligations under the agreement in the event of specified occurrences, which may include the employer's failure to pay required contributions, does not mean that the agreement is unilaterally terminable for purposes of this criterion.

Section 2510.3–40(b)(4)—Factors Indicative of a Bona Fide Collective Bargaining Relationship

Subsection (b)(4) sets forth various factors to be considered in determining whether there is a *bona fide* collective bargaining relationship. In any given case, the decision is to be based on all of the facts and circumstances. The Committee first had attempted to develop a list of criteria that could serve as reliable proxies for what all Committee members recognized were legitimate multiemployer plans not subject to state insurance regulation. To avoid being classified as a MEWA, a plan would have to satisfy certain objective criteria, and it could not have one of the disqualifying characteristics. That approach eventually gave rise to the flexible facts and circumstances test proposed here. The Committee realized that imposing a fixed, bright line profile to define ''collective bargaining'' for the purposes of this regulation would create more unintended issues for multiemployer plans without addressing the problems at which section 3(40) of ERISA was aimed. Those intent on mimicking real collectively bargained plans as a way to avoid state insurance regulation would have a blueprint for doing so, while parties actually involved in collective bargaining, which is sometimes not tidy and compliance-driven in real life, might inadvertently negotiate a health or welfare coverage arrangement that simply failed to fit familiar models or patterns.

Under the proposed rule, the presence or absence of the factors listed in subsection (b)(4) is to be taken into account in judging whether an actual collective bargaining relationship exists for purposes of section (3)(40) of ERISA, but no one factor or set of factors is intended to be determinative in every case. Indeed, some of these factors can, by their nature, apply only in specialized circumstances, and few plans are likely to satisfy all of them. That is why the proposal includes a range of circumstances commonly associated with collectively bargained plans. In addition, information on factors not included in this list may be relevant in individual cases. The Department invites public comments on the factors listed here, and suggestions for other factors to be listed.

While the proposed regulation does not define collective bargaining in terms of specific uniform requirements, it does recognize that where a significant number of the first eight factors exist, the resultant plans are more likely than not to be established or maintained under or pursuant to a collective bargaining agreement within the meaning of section 3(40) of ERISA. Accordingly, in a Section 3(40) Finding Proceeding before a Department of Labor ALJ to determine whether a plan or other arrangement is maintained under or pursuant to a collective bargaining agreement for this purpose, it is presumed that if at least four of the first eight listed factors are present, a *bona fide* collective bargaining relationship exists, that is, that the requirements of subsection (b)(3)(i) are met. That shifts the burden to the party claiming that the arrangement is *not* the product of a *bona fide* collective bargaining relationship to persuade the ALJ to the contrary (or, to the extent that it meets all of the other criteria in addition to subsection (b)(3)(i), to show in some other way, such as by the presence of one of the disqualifying criteria, that the arrangement does not qualify for a finding under the proposed regulation).

Section 2510.3–40(b)(4)(i)

The first factor to be considered under subsection (b)(4) is that the agreement provides for contributions to a labor-management trust fund designed and operated in accordance with the Taft-Hartley Act or to a plan lawfully negotiated under the Railway Labor Act. A plan can meet the requirement that the trust be ''structured in accordance'' with the Taft-Hartley Act even if the plan has a minor violation of that Act's technical requirements. However, there must be more than just a paper recital of the formalities of the Taft-Hartley Act, the trust must function as a labor-management trust within the spirit of the Taft-Hartley Act.

Section 2510.3–40(b)(4)(ii)

The second factor provides that the collective bargaining agreement under which contributions are made to the employee welfare benefit plan also requires that substantially all of the participating employers contribute to a multiemployer pension plan designed and operated in accordance with the Taft-Hartley Act and the plan qualification requirements in section 401 of the Internal Revenue Code. In addition, substantially all of the active participants covered by the employee welfare benefit plan must be eligible to become participants in that pension plan. Because the length of service requirements may be different for the pension plan and the welfare plan, this factor does not require that substantially all of the welfare plan participants in fact become pension plan participants, as long as they are eligible to do so if they meet the pension plan's participation requirements.

Section 2510.3–40(b)(4)(iii)

The third factor applies if the predominant employee organization that is a party to the collective bargaining agreement relating to the employee welfare benefit plan has maintained a series of agreements incorporating or referencing the plan since before January 1, 1983, the effective date of ERISA section 3(40). The term ''predominant employee organization,'' which is specifically defined in the regulation, is used because it is not unusual for a multiemployer plan to be maintained under agreements with more than one labor union. ''Predominant employee organization'' refers to the union that represents the plurality of the plan's participants employed under the agreement. This factor is included as an indicator of the *bona fides*of collective bargaining in recognition of the fact that, if the union has negotiated for health and welfare coverage under the plan since before the enactment of ERISA section 3(40), the plan and the collective bargaining agreement underlying it were not created for the purposes of avoiding the MEWA amendment to ERISA.

The Committee received written comments during the course of its negotiations suggesting that a trust providing health coverage that had been in existence for a certain period of time be ''grandfathered,'' regardless of the percentage of participants covered by collective bargaining agreements. The Committee determined that a grandfather that serves as an indicator of the*bona fides* of the underlying collective bargaining process was warranted. *See* subsections (b)(4)(iii) and (b)(4)(iv). The purpose of the regulatory finding, however, is not to determine what plans or arrangements should or could be the subject of State enforcement action, but rather to define what employee welfare benefit plans are established or maintained under or pursuant to collective bargaining within the meaning of section 3(40) of ERISA. The Committee agreed that, for that purpose, the 80% nexus standard is appropriate regardless of the length of time the plan or trust has been in operation. If a plan or arrangement is not established or maintained under or pursuant to one or more collective bargaining agreements, whether or not ERISA preemption applies is beyond the scope of this regulation.

Section 2510.3–40(b)(4)(iv)

Under the fourth factor, the predominant employee organization that is a party to the agreement relating to the employee welfare benefit plan must have been a national or international union, or a federation of national and international unions, or affiliated with such a union or federation, since before January 1, 1983.

Section 2510.3–40(b)(4)(v)

The fifth factor is that there has been a determination, following a government-supervised election or a contested proceeding, that the predominant employee organization that is a party to the agreement relating to the employee welfare benefit plan is the lawfully recognized or designated collective bargaining representative with respect to one or more bargaining units of personnel covered by such agreement.

Section 2510.3–40(b)(4)(vi)

The sixth factor applies to plans where the employees' coverage (but not necessarily coverage for employees' dependents) is, in large part, employer-funded. It applies where employers pay at least 75% of the premiums or contributions required for the coverage of active participants under the plan, or 75% of the premiums or contributions for retirees in the case of a retiree-only plan. For this purpose, coverage for dental or vision care, or coverage for excepted benefits under the Health Insurance Portability and Accountability Act is disregarded, unless the employer pays at least 75% of the premiums or contributions for that coverage. This calculation is illustrated in the proposed regulation at subsection (e), Example 4.

Section 2510.3–40(b)(4)(vii)

The seventh factor applies where the predominant employee organization provides, sponsors or jointly sponsors a hiring hall and/or a state certified apprenticeship program, the services of which are available to substantially all active participants in the plan. The actual nature of the services offered by the employee organization will control, rather than the existence of self-serving paper formalities that purport to document the existence of such services.

Section 2510.3–40(b)(4)(viii)

The eighth and last factor relevant to the presumption of the *bona fides* of the collective bargaining relationship underlying the plan applies to collective bargaining agreements in the building and construction industry, where some states have prevailing wage statutes for public works projects. This factor applies where a state agency has made an investigation and a determination about whether the collective bargaining agreement is *bona fide* in the course of making a prevailing wage determination, such as under Article 8 of NYS Labor Law, section 220.

Section 2510.3–40(b)(4)(ix)

Subsection (b)(4)(ix) sets forth additional subjective and objective indicia that may be considered in determining the existence of a *bona fide* collective bargaining relationship. This provision gives examples of some of the kinds of indicia that the Committee considered relevant and probative of the existence of a *bona fide* collective bargaining relationship. The examples given, which were not meant to be exhaustive, reflect the Committee's understanding of the realities of collective bargaining. For example, where a collectively bargained plan covers self-employed participants, there is usually a reason grounded in the employment patterns and bargaining structures in that industry, such as owner-operators who remain in the plan whether or not they are currently working under an agreement.

Section 2510.3–40(c)—Exclusions

Section (c), Exclusions, sets forth specific circumstances where, regardless of whether an employee welfare benefit plan meets the general criteria provisions in section (b), an employee welfare benefit plan shall not be deemed to be established or maintained under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements for any plan year where the circumstances are present.

Section 2510.3–40(c)(1)

Subsection (c)(1)(i) addresses the use of insurance agents and brokers (referred to in the regulation as ''insurance producers'') to market self-funded or partially self-funded plans to employers. Many of the problems in this area involved commercial schemes marketed by (1) insurance producers; or (2) by individuals who are disqualified or ineligible for a license to serve as insurance producers; or (3) by other individuals who are paid on a commission-type basis.

Subsection (c)(1)(i) provides that where a plan is self-funded or partially self-funded, and it is marketed by insurance producers or by individuals who are disqualified from, ineligible for, or have failed to obtain a license to serve as an insurance producer, but who engage in activities for which such a license is required, it will be excluded from the regulatory finding in subsection (b), regardless of the method of compensation for marketing. Subsection (c)(1)(i) also takes a plan out of the regulatory finding if individuals other than those described above are paid on a commission basis to market the plan. This was designed to prevent avoidance of the above limitation by use of people other than insurance producers. The qualification involving payment on a commission basis was intended to distinguish this kind of commercial enterprise from union organizing that features health or other welfare benefits.

Subsection (c)(1)(ii) addresses the concept of ''marketing'' for the purposes of subsection (c)(1)(i). The Committee recognized that insurance producers have a role in the administration of multiemployer plans, and they can be compensated appropriately for those services. Those services—including offering or selling those services to the plan—do not trigger the exclusion, and the regulation makes this clear. The regulation is not intended to preclude insurance producers from selling insurance coverage to the trustees of a multiemployer plan, *i.e.*, marketing

insurance products to a plan that is or seeks to become partly or fully insured. Nor is union organizing among insurance producers the kind of marketing that this regulation addresses. On the other hand, marketing to employers does include selling health coverage under the guise of enrolling their employees in union membership. This subsection does not purport to provide an exhaustive list of what is or is not ''marketing.'' The Department seeks suggestions on whether there should be further clarification of the definition of ''marketing.''

The Committee also recognized that enterprises that are not really operating pursuant to a *bona fide* collective bargaining relationship may attempt to market health coverage commercially under the guise of union organizing, using media such as the Internet, and without using insurance producers or paying other individuals on a commission-type basis. While such a situation would not come within the subsection (c)(1) exclusion for marketing, if the facts indicated that the primary objective was not to achieve broader representation of workers in regard to their employment, but rather to provide health coverage without having to comply with state regulation, that conduct could be evidence of a scheme, sham or artifice intended to evade state regulation that would cause the undertaking to be treated as a MEWA under subsection (c)(2).

Section 2510.3–40(c)(2)

Subsection (c)(2) is a general provision excluding arrangements that on the surface meet the affirmative criteria of the regulation, but that in fact are designed to evade compliance with state law and insurance regulation. This exclusion recognizes that sophisticated entities might mimic the characteristics of collective bargaining as set forth in the regulation, but in fact be providing commercial health coverage without complying with state law.

Such a scheme might be present, for example, if parties who collaborate in a project to sell self-funded health coverage to otherwise unrelated members of the public set up an organization that they label a labor union, advertise broadly in commercial venues and have people who pay premiums sign forms that are labeled ''union membership cards.'' The attempt to camouflage their commercial enterprise as a collectively bargained arrangement would be a scheme to evade state law that would cause it to be a MEWA, even if on its face it appears to meet the criteria that would qualify it for a finding under subsection (b) of the proposed regulation.

Section 2510.3–40(c)(3)

Subsection (c)(3) provides an exclusion in the event of fraud, forgery, or willful misrepresentation regarding the plan's conformance with the affirmative criteria of the regulation. The Committee was aware of situations where documentation of collective bargaining had been manufactured for the purposes of misleading state regulators as to the availability of federal preemption.

Section 2510.3–40(d)—Definitions

The following terms are defined in the regulation: ''active participant,'' ''agreement,'' ''individual employed,'' ''insurance producer,'' and ''predominant employee organization.''

Economic Analysis Under Executive Order 12866

Under Executive Order 12866, the Department must determine whether the regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB). OMB has determined that this proposed rulemaking is significant within the meaning of section 3(f)(4) of the Executive Order. Consistent with the Executive Order, the Department of Labor (the Department) has undertaken an assessment of the costs and benefits of this regulatory action.

The analysis is detailed below.

Summary

Pursuant to the requirements of Executive Order 12866 the Department has analyzed the economic impact of this proposed regulation and has concluded that the proposed regulation's benefits exceed its costs although neither is quantified. The proposed regulation yields positive benefits by reducing uncertainty over which health, life, disability or other welfare benefit arrangements are multiple employer welfare arrangements under section 3(40) and therefore not subject to state regulation. It also yields positive benefits by clarifying when state regulation applies and when it is preempted.

The regulation sets forth a substantive standard for distinguishing whether a welfare plan sponsored by more than one employer is established or maintained under or pursuant to one or more collective bargaining agreements. Plans so established or maintained are excluded from the definition of multiple employer welfare arrangements (MEWAs) and consequently are not subject to state regulation. The regulation will serve to distinguish multiemployer collectively bargained plans, which are not subject to state regulation, from MEWAs, which are so subject.

The regulation, which is a product of negotiated rulemaking, is designed so that the benefits outweigh the costs. The adoption of this regulation will limit uncertainty in determining whether certain plans are established or maintained under or pursuant to one or more collective bargaining agreements. Although the criteria established in this proposal should generally reduce disputes over applicability of state laws, a very small number of entities may still become involved in disputes over assertions of state law jurisdiction and, in certain circumstances, may seek administrative determinations by the Secretary. The Department has concluded that the cost of such determinations will be small relative to the cost of settling such disputes through litigation or other currently available means.

The regulation's elements are grounded in documentation that plans or their agents generally maintain as part of usual business practices. The regulation also has some elements of flexibility, allowing plans to demonstrate the existence of a *bona fide* collective bargaining agreement, one of the regulatory factors, by satisfying any four of eight specified factors. Finally, the regulation is both sufficiently broad to embrace all plans established or

maintained under or pursuant to one or more collective bargaining agreements and exclusive enough to ensure the applicability of state regulation wherever such is not the case. Only a very small number of entities are likely to be treated differently under the regulation than they are now. Plans will be determined to be MEWAs only when they are not established or maintained under or pursuant to a collective bargaining agreement, in which case the additional cost attributable to state regulation will be outweighed by the benefit of additional protections for participants and beneficiaries.

Background

For the protection of welfare benefit plan participants and beneficiaries, multiple employer welfare arrangements (MEWAs) providing health insurance are subject to both state and federal regulation. An exception to the rule applies to MEWAs established or maintained under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements. Because collectively bargained employee welfare benefit plans are not subject to state insurance regulation, unscrupulous operators have created arrangements which purport to offer health, life, disability or other welfare benefit insurance and are promoted as plans established or maintained pursuant to one or more collective bargaining agreements, but in fact are not. These operators have sold insurance to employers, usually for reduced premiums, and then have been unable to pay the insurance claims filed by the employees. At the same time, they have retained large administrative fees for themselves.

The General Accounting Office, in a March 1992 Report titled ''*Employee Benefits: States Need Labor's Help Regulating Multiple Employer Welfare Arrangements,*'' (GAO/HRD–92–40) estimated that sham MEWAs owed $124 million in claims, affecting 398,000 participants and beneficiaries. State insurance offices, however, were only able to recover $10 million, often as a result of dissolution of the MEWAs following their insolvency.

At various times, both Congress and the Department have published guidelines in an attempt to help states regulate MEWAs, but, without a definition for a collective bargaining agreement, sham MEWAs have continued to operate and to claim the collective bargaining agreement exception when confronted with state regulation. In order to establish jurisdiction, states initiated administrative or legal proceedings contesting the defendant's status as a collectively bargained plan or were themselves the subject of declaratory judgment or removal actions by entities claiming the exception. Likewise, for both MEWAs and some plans established or maintained under collective bargaining agreements, there was uncertainty about their legal status and, consequently, about the applicability of insurance regulations and the recordkeeping and reporting required.

Reducing Uncertainty

Confusion about whether a plan was established or maintained under or pursuant to an agreement which the Secretary finds to be a collective bargaining agreement has made it difficult for the states to enforce appropriate laws. With this proposed regulation pertaining to the collective bargaining agreement exception applicable to MEWAs (ERISA section 3(40)(A)(i)), the Department is promulgating a set of guidelines which will aid employers, third parties, and participants and beneficiaries of plans, as well as state agencies, in determining the legal status of a welfare benefit plan. Specifically, the proposed regulation sets out the various factors indicative of when a plan is established or maintained under or pursuant to a *bona fide* collective bargaining agreement.

The regulation proposed today will benefit states and plans by providing a tool with which to independently determine the legal status of a welfare benefit plan or arrangement without recourse to the Department or to the courts. The result will be a positive limitation of uncertainty for plans and arrangements and the states, and a reduction in time and expense attributable to court actions or requests to the Department for guidance. Plans and arrangements will benefit from the assurance of knowing their correct legal status, and states, through warranted intervention, will be better able to protect employers, participants, and beneficiaries from unscrupulous MEWA operators.

For the majority of plans established or maintained under or pursuant to collective bargaining agreements, this regulation will serve to codify the manner in which the plans are currently operating. Plan status under the regulation generally will be clear based on signed agreements, filings with the IRS, participation in related industries, or other design features which categorize a plan as a collectively bargained plan or a MEWA. Most plans, therefore, will not perceive any need to reassess their status systematically. It is possible, however, that some plans will undertake such an assessment and comparison test. The Department has estimated below the number of plans likely to comparison test.

Under ERISA, multiemployer collectively bargained plans are required to file an annual financial report, the Form 5500. Data from the 1995 filings showed 2,180 filings (6.0 million participants) from ERISA multiemployer welfare benefit plans established or maintained under or pursuant to collective bargaining agreements. The Department also examined the number of MEWAs. Preliminary findings of an analysis conducted by the RAND Corporation of data from the 1997 Robert Wood Johnson Foundation Employer Health Insurance Survey, indicate that there are approximately 2,000 MEWAs (both ERISA-plan and non-ERISA-plan MEWAs), covering 4.1 million employees. The total number of MEWAs and collectively bargained plans, which represents the total universe of arrangements that might question their legal status and comparison test under this proposed regulation, is 4,180. (10.1 million participants).

The Department was unable to identify any direct measure of the number of plans or arrangements whose status is uncertain or whose status would remain uncertain under the proposed regulation. Therefore, in order to assess the economic impact of reduced uncertainty under the proposed regulation, the Department examined proxies for the number of arrangements that might be subject to such uncertainty. First, the Department estimated the total number of MEWAs and collectively bargained plans, taking this to reflect the universe of arrangements which would encompass the small subset of arrangements subject to uncertainty. The Department then tallied the number of inquiries to the Department concerning MEWAs and the number of MEWA-related lawsuits to which the Department has been party, taking this to represent a reasonable indicator of arrangements that have been subject to uncertainty in the past.

Department data indicate that for the ten-year period from 1990 to 1999, the Department received 88 MEWA-related inquiries. These include inquiries received from state and federal agencies and the private sector. On an annualized basis, this represents approximately 9 MEWA-related requests for information per year. The Department also considered the number of MEWA-related lawsuits which were filed during the years 1990–1999. Department data indicate that it has been a party to 375

civil and 75 criminal cases from 1990–1999. The total number of lawsuits would be 450 lawsuits, or 45 lawsuits annually. For purposes of this analysis, it has been assumed that each case involves a different arrangement. Accordingly, the estimated number of arrangements that historically may have demonstrated uncertainty over their legal status would be 9 plus 45, or 54 plans per year. The estimated 54 plans, as a percentage of the total number of 4,180 MEWAs and collectively bargained plans, amounts to approximately 1.3 percent.

In one sense, this historical number of plans and arrangements may represent only a subset of all those that faced uncertainty over their status. Some plans and arrangements may have confronted uncertainty but not become the subject of an inquiry to the Department or a lawsuit to which the Department was party. On the other hand, this number overstates the number of plans and arrangements that faced uncertainty because it is known that only a portion of miscellaneous inquiries and civil and criminal actions involved issues related to collective bargaining agreements or other MEWA-related matters. The number may also overstate the number of plans or arrangements likely to face uncertainty because the issue of whether federal preemption applies is not presented in suits brought by the federal government; ERISA generally applies both to plans and to MEWAs. The Department therefore views 54 plans per year as a conservatively high estimate of the number of plans or arrangements that might perceive a need to systematically assess their status under the proposed regulation.

The cost to the 54 plans of conducting such an assessment is expected to be small. It will largely be attributed to reviewing records kept by third parties or by the plan or arrangement in the ordinary course of business. The Department assumes that this review requires 16 hours of a lawyer's or comparable professional's time plus 5 hours clerical staff time. Department data suggest that average compensation costs for lawyers and clerical workers amount to $72 per hour and $21 per hour respectively. Third party service providers to plans or arrangements, such as private law firms, typically bill at higher rates than this. However, it is expected that the cost of an in-house attorney will equate to the cost of a firm attorney due to firms' efficiencies of time and resources attributable to specialists' greater expertise and experience in a given field. The total cost then would be $1,173 per plan or arrangement, or about $63,342 on aggregate per year for 54 plans. This cost would be incurred only once for a given plan or arrangement unless its circumstances changed substantially relative to the standard. It is expected that this cost will be far outweighed by savings to plans and arrangements from avoiding the need to engage in litigation or seek guidance from the Department in order to determine their status. These net savings represent a net benefit from this proposed regulation.

Following such assessments, some fraction of these 54 plans or arrangements might nonetheless dispute a state's assertions of jurisdiction and consequently seek an administrative determination from the Secretary, incurring attendant costs. The Department has elected to attribute the net benefit from these savings not to this proposed regulation, but to the accompanying proposed regulation that established an administrative process for determining such plans' or arrangements' status.

Reclassifying Incorrectly Classified Plans and Arrangements

Some number of plans, but unlikely any more than the same fraction of the 54 estimated to face uncertainty over status, will be reclassified as a result of comparison testing against the proposed regulation's standard. Plans formerly classified (either by error or intentionally self-classified in an attempt to avoid state law requirements) as collectively bargained plans may be newly classified as MEWAs under this proposed regulation. These MEWAs will incur costs to comply with newly applied protective state regulations. Applicable regulations vary from state to state, making it difficult to estimate the cost of compliance, but it is likely that costs might include those attributable to audits, funding and reserving, reporting, premium taxes and assessments, provision of state-mandated benefits, underwriting and rating rules, market conduct standards, and managed care patient protection rules, among other costs. These costs may be higher for those MEWAs that conduct business in more than one state.

The Department considered an estimate of the cost to plans newly classified as MEWAs as follows. Relevant literature suggests that in the upper range these costs can amount to 10 percent of premium. (The cost may be substantially more than this if the arrangement would otherwise have benefitted from insuring a population whose health costs are far lower than average. However, these added costs would be transfers and not true economic costs, because they would serve as cross-subsidies which reduce costs for populations that are costlier than average.) As noted above, the universe of 4,180 plans and arrangements that includes those potentially subject to uncertainty covered 10.1 million participants, or about 2,400 participants per arrangement on average. Industry surveys put the cost of health coverage at about $4,500 per employee and retiree per year. Applying these figures to 54 plans or arrangements that might face uncertainty over status—an upper bound on the number likely to be reclassified—produces an upper-bound estimate cost of about $58 million.

The Department has concluded that actual costs will be far lower than this, and will be outweighed by the benefit of the associated protections. As noted above, it is likely that the true number of arrangements that are reclassified will be a fraction of the estimated 54 that might face uncertainty over status. Among those that are reclassified, some would have voluntarily elected to comply with state regulatory requirements and therefore would not incur any cost from the application of state law. For those that would not have provided such benefits, the cost of providing them would largely be offset by the benefits themselves. Most important, the added cost from state regulation would be offset by the benefits from the protections that state regulation provide. GAO in 1992 identified $124 million in unpaid claims owed by sham MEWAs. Department enforcement actions separately identified MEWA monetary violations of $84 million, and more than 100 investigations remain open. With state licensing and solvency requirements in place, at least some incidences of the $124 million in unpaid claims cited in the GAO study or the $84 million in violations would most likely not have occurred.

It is also possible that some plans or arrangements heretofore classified as MEWAs will be reclassified as collectively bargained plans. However, it seems unlikely that many will, because those that can qualify as collectively bargained plans have an economic incentive to do so. Any that are so classified may choose to benefit from savings, there being no obligation to comply with state regulatory requirements. There will be no meaningful loss of benefits from the removal of state protections in such cases because the combination of a legitimate collective bargaining

agreement and the application of ERISA provides adequate protections.

Paperwork Reduction Act

This Notice of Proposed Rulemaking is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it does not contain a ''collection of information'' as defined in 44 U.S.C. 3502(3).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a proposed rule will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of analysis under the RFA, PWBA proposes to continue to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of the Employee Retirement Income Security Act of 1974 (ERISA), which permits the Secretary of Labor to prescribe simplified annual reports for pension plans which cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for exemptions or simplified annual reporting and disclosure for welfare benefit plans. Pursuant to the authority of section 104(a)(3), the Department has previously issued at 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46 and 2520.104b–10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans covering fewer than 100 participants and which satisfy certain other requirements.

Further, while some large employers may have small plans, in general most small plans are maintained by small employers. Thus, PWBA believes that assessing the impact of this proposed rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business which is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*). PWBA therefore requests comments on the appropriateness of the size standard used in evaluating the impact of this proposed rule on small entities.

On this basis, however, PWBA has preliminarily determined that this rule will not have a significant economic impact on a substantial number of small entities. In support of this determination, and in an effort to provide a sound basis for this conclusion, PWBA has prepared the following regulatory flexibility analysis.

(1) Reasons for Action. PWBA is proposing this regulation because it believes that regulatory guidance in determining criteria for what is a ''plan or arrangement which is established or maintained under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements,'' ERISA 3(40)(A)(1), 29 U.S.C. § 1002(40)(a)(1) is necessary to ensure: (a) That state insurance regulators have ascertainable guidelines to help regulate MEWAs operating in their jurisdictions, and; (b) that sponsors of employee welfare benefit plans will be able to determine independently whether their plans are excepted plans under section 3(40) of ERISA. A more detailed discussion of the agency's reasoning for issuing the proposed regulation is found in the Background section, above.

(2) Objective. The objective of the proposed regulation is to provide criteria for the application of an exception to the definition of the term ''multiple employer welfare arrangement'' (MEWA) which is found in ERISA section 3(40). An extensive list of authority may be found in the Statutory Authority section, below.

(3) Estimate of Small Entities Affected. For purposes of this discussion, the Department has deemed a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans which cover fewer than 100 participants. For this purpose, it is assumed that arrangements with fewer than 100 participants and which are: (1) Multiemployer collectively bargained group health plans; (2) non-collectively bargained multiple employer group health plans, or; (3) other multiple employer arrangements which provide medical benefits, are small plans. PWBA believes that assessing the impact of this proposed rule on small plans is an appropriate substitute for evaluating the effect on small entities as that term is defined in the RFA. No small governmental jurisdictions will be affected.

IRS filings and Department data indicate that there are a possible 4,180 plans that could be classified as a collectively bargained plan or a MEWA and that could be affected by the new criteria for defining what is a collective bargaining agreement. It is expected, however, that a very small number of these arrangements will have fewer than 100 participants. By their nature, the affected arrangements must involve at least two employers, which decreases the likelihood of coverage of fewer than 100 participants. Also, underlying goals of the formation of these arrangements, such as gaining purchasing and negotiating power through economies of scale, improving administrative efficiencies, and gaining access to additional benefit design features, are not readily accomplished if the group of covered lives remains small. While there are no statistics to determine the number of small plans among the 4,180, based on the health coverage reported in the Employee Benefits Supplement to the 1993 Current Population Survey and a 1993 Small Business Administration survey of retirement and other benefit coverages in small firms, research data indicates that there are more than 2.5 million private group health plans with fewer than 100 participants. Thus, even if every one of the 4,180 plans included fewer than 100 participants, which is highly unlikely, the number of plans affected would represent approximately one-tenth of one percent of all small group health plans. Accordingly, the Department has determined that this regulation will not have a significant economic impact on a substantial number of small entities.

Although relatively few small plans and other arrangements are expected to be affected by this proposal, it is known that the employers typically involved in these plans or arrangements are often small (that is, they have fewer than 500 employees, which is generally consistent with the definition of small entity found in regulations issued by the Small Business Administration (13 CFR 121.201)). The Department knows of no data that would support a direct measure of the number of small employers potentially impacted by the proposed regulation. However, because

these plans and arrangements involve at least two employers, and assuming conservatively that each is small, it can be estimated that at least 8,360 small employers may be affected. The Department seeks comments and supporting data with respect to the number of small employers potentially impacted by the establishment of a standard for determining whether a welfare plan is established or maintained under or pursuant to one or more collective bargaining agreements.

In addition, any one of the employers participating in a MEWA or plan established or maintained under or pursuant to a collective bargaining agreement may find that it has unknowingly participated in a sham MEWA and will need to join a new plan. By restricting fraudulent and financially unsound MEWAs, therefore, the proposed regulation may limit the sources of health care, life, disability or other welfare benefit coverage offered to some small businesses, requiring them to seek alternative coverage for their employees. The greater benefit for employers, however, is that there is an increased certainty that the remaining MEWAs will meet state regulatory standards and will be capable of providing promised health, life, disability or other welfare benefits to employees. Consequently, employers will receive a net benefit from the reduced incidence of fraud and insolvency among the pool of MEWAs in the marketplace.

(4) Reporting and Recordkeeping. No identical reporting or recordkeeping is required under the proposed rule. In most cases, the records used to determine if a welfare benefit plan is established or maintained under or pursuant to a collective bargaining agreement will be routinely prepared and held by a collectively bargained multiemployer plan in the ordinary course of business. For any plans which are newly determined to be MEWAs, there will be an economic impact related to the start-up costs of compliance with state regulations. Start-up costs may include expensing registration, licensing, financial reporting, auditing, and any other requirement of state insurance law. Reporting and filing this information with the state would require the professional skills of an attorney, accountant, or other health benefit plan professional; however, post start-up, the majority of the recordkeeping and reporting could be handled by clerical staff.

(5) Duplication. No federal rules have been identified that duplicate, overlap, or conflict with the proposed rule.

(6) Alternatives. The proposed regulation represents the consensus report of a committee established to provide an alternative to a Department Notice of Proposed Rulemaking on Plans Established or Maintained pursuant to Collective Bargaining Agreements, published in the **Federal Register** in 1995. At that time, recognizing that guidance was needed to clarify the collective bargaining exception to the MEWA regulation, the Department proposed certain criteria related to describing the collective bargaining agreement. Commenters on the proposal expressed concerns related to plan compliance and the issue of state regulation.

Based on the comments received, the Department turned to negotiated rulemaking as an appropriate alternative to implementing a revised Notice of Proposed Rulemaking. In September 1998, the Secretary established the ERISA Section 3(40) Negotiated Rulemaking Advisory Committee under the Negotiated Rulemaking Act. (5 U.S.C. 561 *et seq.*) The Committee membership included representatives from labor unions, multiemployer plans, state governments, employer/management associations, Railway Labor Act plans, third-party administrators, independent agents and brokers of health care products, insurance carriers and the federal government. This regulation represents the Committee's consensus, in the form of a proposed rule, for guiding state governments and plans in determining whether an entity has been established or maintained under or pursuant to one or more collective bargaining agreements and is therefore not subject to state regulation. Based on the fact that this Notice of Proposed Rulemaking is the result of a Committee decision by consensus, and the fact that the Committee represents a cross section of the state, federal, association, and private sector health care universe, the Department believes that as an alternative to the 1995 NPRM this regulation will accomplish the stated objectives of the Secretary and will have a beneficial impact on small employer participation in MEWAs. The Department has concluded that the proposed regulation is less costly in comparison with alternative methods of determining compliance with section 3(40), such as case-by-case analysis by PWBA of each employee welfare plan or litigation. In addition, not defining specific guidelines for compliance with section 3(40) and permitting sham MEWAs to continue to function would raise costs to small businesses in terms of loss of coverage and unpaid claims. No other significant alternatives which would minimize economic impact on small entities have been identified.

It would be inappropriate to create an exemption under the proposed regulation for small MEWAs because small MEWAs are not less likely to be underfunded or otherwise have inadequate reserves to meet the benefit claims submitted for payment than are large MEWAs.

Small Business Regulatory Enforcement Fairness Act

The rule being issued here is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and, if finalized, will be transmitted to Congress and the Comptroller General for review. The rule is not a ''major rule'' as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub.L. 104–4), as well as Executive Order 12875, this proposed rule does not include any federal mandate that may result in expenditures by state, local, or tribal governments, or the private sector, which may impose an annual burden of $100 million.

Executive Order 13132

When an agency promulgates a regulation that has federalism implications, Executive Order 13132 (64 FR 43255, August 10, 1999), requires that the Agency provide a federalism summary impact statement. Pursuant to section 6(c) of the Order, such a statement must include a description of the extent of the agency's consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of the State have been met.

This proposed regulation has federalism implications because it sets forth standards and procedures for determining whether certain entities

may be regulated under certain state law or whether such state laws are preempted with respect to such entities. The state laws at issue are those that regulate the business of insurance. A representative from the National Association of Insurance Commissioners (NAIC), which represents the interests of state governments in the regulation of insurance, participated in this rulemaking from the inception of the Negotiated Rulemaking Committee.

In the course of this rulemaking, the NAIC raised the following concerns: (1) That the rule allow MEWAs to be easily distinguishable from collectively bargained plans so that MEWAs may be properly subjected to state jurisdiction and regulation; (2) that the rule prevent the unlicensed sale of health insurance; and; (3) that losses to individuals in the form of unreimbursed and denied medical claims be stopped.

The Department's position with regard to this rulemaking is that there is an overwhelming need for this regulation. Sham operators have been exploiting the lack of regulation in this area by claiming to be established or maintained pursuant to collective bargaining, thereby avoiding state regulation. These operators have marketed unlicensed health insurance to small employers free of state solvency and reserve requirements and have therefore offered health insurance at significantly cheaper rates than state-licensed insurance companies. Ultimately these operations have gone bankrupt, leaving participants with significant unpaid claims and without health insurance. This regulation will provide objective criteria to distinguish collectively bargained plans from arrangements subject to state insurance law. It will also provide entities that claim to be exempt from state regulation, an expedited procedure to obtain a finding from the Department under certain conditions.

By providing objective criteria distinguishing collectively bargained plans from arrangements subject to state insurance law, the regulation should facilitate state enforcement efforts against arrangements attempting to misuse the collectively bargained exception in section 3(40) of ERISA. In that regard, the regulation should make more difficult the sale of unlicensed insurance under the guise of collectively bargained plans and limit the losses to individuals in the form of unreimbursed and denied medical and other welfare benefit insurance claims resulting from that type of sham arrangement.

Statutory Authority

This regulation is proposed pursuant to the authority in sections 107, 209, 504, and 505 of ERISA (Pub. L. 93–406, 88 Stat. 894, 29 U.S.C. 1027, 1059, 1134, 1135) and under Secretary of Labor's Order No. 1–87, 52 FR 13139, April 21, 1987.

List of Subjects in 29 CFR Part 2510

Collective bargaining, Employee benefit plans, Pensions.

Proposed Regulation

For the reasons set out in the preamble, the Department proposes to amend Part 2510 of Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

PART 2510—[AMENDED]

1. The authority citation for Part 2510 is revised to read as follows:

Secs. 3(2), 3(40), 111(c), 505, Pub. L. 93–406, 88 Stat. 852, 894, (29 U.S.C. 1002(2), 1002(40), 1031, 1135); Secretary of Labor's Order No. 27–74, 1–86, 1–87, and Labor Management Services Administration Order No. 2–6.

Section 2510.3–101 is also issued under sec. 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1978); 3 CFR, 1978 Comp., p. 332, and sec. 11018(d) of Pub. L. 99–272, 100 Stat. 82.

Section 2510.3–102 is also issued under sec. 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1978); 3 CFR, 1978 Comp., p. 332, and sec. 11018(d) of Pub. L. 99–272, 100 Stat. 82.

2. Section 2510.3–40 is added to read as follows:

§ 2510.3–40 Plans Established or Maintained Under or Pursuant to Collective Bargaining Agreements Under Section 3(40)(A) of ERISA.

(a) *Scope and purpose.* Section 3(40)(A) of the Employee Retirement Income Security Act of 1974 (ERISA) provides that the term ''multiple employer welfare arrangement'' (MEWA) does not include an employee welfare benefit plan which is established or maintained under or pursuant to one or more agreements which the Secretary of Labor (the Secretary) finds to be collective bargaining agreements. This section sets forth a finding by the Secretary that an arrangement is an employee welfare benefit plan established or maintained under or pursuant to one or more collective bargaining agreements if the plan meets the criteria in this section. This section also sets forth a finding by the Secretary that certain arrangements are not employee welfare benefit plans established or maintained under or pursuant to a collective bargaining agreement, regardless of whether they purport to meet the regulatory criteria. No finding by the Secretary in or pursuant to this section shall constitute a finding for any purpose other than the exception for plans established or maintained under or pursuant to one or more collective bargaining agreements under section 3(40) of ERISA. The procedure for obtaining a finding by the Secretary in a particular case where there is an attempt to assert state jurisdiction or the application of state law with respect to a plan or other arrangement that allegedly is covered under Title I of ERISA, is set forth in 29 CFR part 2570, subpart G.

(b) *General criteria.* The Secretary finds, for purposes of section 3(40) of ERISA, that an employee welfare benefit plan is ''established or maintained under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements'' for any plan year in which the plan meets the criteria set forth in paragraphs (b)(1), (2), (3), and (4) of this section, and is not excluded under paragraph (c) of this section:

(1) The entity is an employee welfare benefit plan within the meaning of section 3(1) of ERISA.

(2) At least 80% of the participants in the plan are:

(i) Individuals employed under one or more agreements meeting the criteria of paragraph (b)(3) of this section, under which contributions are made to the plan, or pursuant to which coverage under the plan is provided;

(ii) Retirees who either participated in the welfare benefit plan at least five of the last 10 years preceding their retirement, or:

(A) Are receiving benefits as participants under a multiemployer pension benefit plan that is maintained under the same agreement referred to in paragraph (b)(2)(i) of this section, and

(B) Have at least five years of service or the equivalent under that multiemployer pension benefit plan;

(iii) Participants on extended coverage under the plan pursuant to the requirements of a statute or court or administrative agency decision, including but not limited to the continuation coverage requirements of the Consolidated Omnibus Budget Reconciliation Act of 1985, sections 601–609, the Family and Medical Leave Act, 29 U.S.C. 2601 *et seq.*, the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301 *et seq.*, or the National Labor Relations Act, 29 U.S.C. 158(a)(5);

(iv) Participants who were active participants and whose coverage is

otherwise extended under the terms of the plan, including but not limited to extension by reason of self-payment, hour bank, long or short-term disability, furlough or temporary unemployment, provided that the charge to the individual for such extended coverage is no more than the applicable premium under section 604 of the Act;

(v) Participants whose coverage under the plan is maintained pursuant to a reciprocal agreement with one or more other employee welfare benefit plans established or maintained under or pursuant to one or more collective bargaining agreements and that are multiemployer plans;

(vi) Individuals employed by:

(A) An employee organization that sponsors, jointly sponsors or is represented on the association, committee, joint board of trustees, or other similar group of representatives of the parties who sponsor the plan,

(B) The plan or associated trust fund, or

(C) Other employee benefit plans or trust funds to which contributions are made pursuant to the same agreement described in paragraph (b)(2)(i) of this section;

(vii) individuals who were employed under an agreement described in paragraph (b)(3) of this section, provided that they are employed by one or more employers that are parties to an agreement described in paragraph (b)(3) and are covered under the plan on terms that are generally no more favorable than those that apply to similarly situated individuals described in paragraph (b)(2)(i) of this section;

(viii) Individuals (other than individuals described in paragraph (b)(2)(i) of this section) who are employed by employers that are bound by the terms of an agreement described in paragraph (b)(3)(i) of this section and that employ personnel covered by such agreement, and who are covered under the plan on terms that are generally no more favorable than those that apply to such covered personnel. For this purpose, such individuals in excess of 10% of the total population of participants in the plan are disregarded;

(ix) Individuals who are, or were for a period of at least three years, employed under one or more agreements between or among one or more ''carriers'' (including ''carriers by air'') and one or more ''representatives'' of employees for collective bargaining purposes and as defined by the Railway Labor Act, 45 U.S.C. 151 *et seq.*, providing for such individuals' current or subsequent participation in the plan, or providing for contributions to be made to the plan by such carriers; or

(x) Individuals who are licensed marine pilots operating in United States ports as a state-regulated enterprise and are covered under an employee welfare benefit plan that meets the definition of a qualified merchant marine plan, as defined in section 415(b)(2)(F) of the Internal Revenue Code (26 U.S.C.).

(3) The plan is incorporated or referenced in a written agreement between two or more employers and one or more employee organizations, which agreement, itself or together with other agreements among the same parties:

(i) Is the product of a bona fide collective bargaining relationship between the employers and the employee organization(s);

(ii) Identifies employers and employee organization(s) that are parties to and bound by the agreement;

(iii) Identifies the personnel, job classifications and/or work jurisdiction covered by the agreement;

(iv) Provides for terms and conditions of employment in addition to coverage under, or contributions to, the plan; and

(v) Is not unilaterally terminable or automatically terminated solely for non-payment of benefits under or contributions to, the plan.

(4) For purposes of paragraph (b)(3)(i), of this section, the following factors, among others, are to be considered in determining the existence of a *bona fide* collective bargaining relationship. In any proceeding initiated under 29 CFR part 2570 Subpart G, the existence of a *bona fide* collective bargaining relationship under paragraph (b)(3)(i) shall be presumed where at least four of the factors set out in paragraphs (b)(4)(i) through (viii), of this section are established:

(i) The agreement referred to in paragraph (b)(3) of this section provide(s) for contributions to a labor-management trust fund structured according to section 302(c)(5), (6), (7), (8), or (9) of the Taft-Hartley Act, 29 U.S.C. 186(c)(5), (6), (7), (8) or (9), or to a plan lawfully negotiated under the Railway Labor Act;

(ii) The agreement referred to in paragraph (b)(3) of this section requires contributions by substantially all of the participating employers to a multiemployer pension plan that is structured in accordance with section 401 of the Internal Revenue Code (26 U.S.C.), and is either structured in accordance with section 302(c)(5) of the Taft-Hartley Act, 29 U.S.C. 186(c)(5), or is lawfully negotiated under the Railway Labor Act, and substantially all of the active participants covered by the employee welfare benefit plan are also eligible to become participants in that pension plan;

(iii) The predominant employee organization that is a party to the agreement referred to in paragraph (b)(3) of this section has maintained a series of agreements incorporating or referencing the plan since before January 1, 1983;

(iv) The predominant employee organization that is a party to the agreement referred to in paragraph (b)(3) of this section has been a national or international union, or a federation of national and international unions, or has been affiliated with such a union or federation, since before January 1, 1983;

(v) A court, government agency or other third-party adjudicatory tribunal has determined, in a contested or adversary proceeding, or in a government-supervised election, that the predominant employee organization that is a party to the agreement described in paragraph (b)(3) of this section is the lawfully recognized or designated collective bargaining representative with respect to one or more bargaining units of personnel covered by such agreement;

(vi) Employers who are parties to the agreement described in paragraph (b)(3) of this section pay at least 75% of the premiums or contributions required for the coverage of active participants under the plan or, in the case of a retiree only plan, the employer pays at least 75% of the premiums or contributions required for the coverage of the retirees. For this purpose, coverage under the plan for dental or vision care, or coverage for excepted benefits under 29 CFR 2590.732(b), is disregarded;

(vii) The predominant employee organization that is a party to the agreement described in paragraph (b)(3) of this section (b)(3) provides, sponsors or jointly sponsors a hiring hall(s) and/or a state-certified apprenticeship program(s) that provide services that are available to substantially all active participants covered by the plan;

(viii) The agreement described in paragraph (b)(3) of this section has been determined to be a *bona fide* collective bargaining agreement for purposes of establishing the prevailing practices with respect to wages and supplements in a locality, pursuant to a prevailing wage statute of any state or the District of Columbia.

(ix) There are other objective or subjective indicia of actual collective bargaining and representation, such as that arm's length negotiations occurred between the parties to the agreement described in paragraph (b)(3) of this section; that the predominant employee organization that is party to such agreement actively represents employees covered by such agreement

with respect to grievances, disputes or other matters involving employment terms and conditions other than coverage under or contributions to the employee welfare benefit plan; that there is a geographic, occupational, trade, organizing or other rationale for the employers and bargaining units covered by such agreement; that there is a connection between such agreement and the participation, if any, of self-employed individuals in the employee welfare benefit plan established or maintained under or pursuant to such agreement.

(c) *Exclusions.* (1) An employee welfare benefit plan shall not be deemed to be ''established or maintained under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements'' for any plan year in which:

(i) The plan is self-funded or partially self-funded, and is marketed to employers or sole proprietors:

(A) By one or more insurance producers as defined in paragraph (d) of this section,

(B) By an individual who is disqualified from or ineligible for, or has failed to obtain, such a license to serve as an insurance producer to the extent that the individual engages in an activity for which such license is required, or

(C) By individuals (other than individuals described in paragraphs (c)(1)(i) (A) and (B) of this section) who are paid on a commission-type basis to market the plan;

(ii) For the purposes of this paragraph (c):

(A) ''Marketing'' does not include administering the plan, consulting with plan sponsors, counseling on benefit design or coverage, or explaining the terms of coverage available under the plan to employees or union members;

(B) ''Marketing'' does include the marketing of union membership that carries with it plan participation by virtue of such membership, except for membership in unions representing insurance producers themselves;

(2) The agreement under which the plan is established or maintained is a scheme, plan, stratagem or artifice of evasion, a principal intent of which is to evade compliance with state law and regulations applicable to insurance; or

(3) There is fraud, forgery or willful misrepresentation as to the factors relied on to demonstrate that the plan satisfies the criteria set forth in paragraph (b) of this section.

(d) *Definitions.* (1) *Active participant* means a participant who is not retired and who is not on extended coverage under paragraphs (b)(2)(iii) or (b)(2)(iv) of this section.

(2) *Agreement* means the contract embodying the terms and conditions mutually agreed upon between or among the parties to such agreement. Where the singular is used in this section, the plural is automatically included.

(3) *Individual employed* means any natural person who furnishes services to another person or entity in the capacity of an employee under common law, without regard to any specialized definitions or interpretations of the terms ''employee,'' ''employer,'' or ''employed'' under federal or state statutes other than ERISA.

(4) *Insurance producer* means an agent, broker, consultant, or producer who is an individual, entity, or sole proprietor, that is licensed under the laws of the state to sell, solicit, or negotiate insurance.

(5) *Predominant employee organization* means, where more than one employee organization is a party to an agreement, either the organization representing the plurality of individuals employed under such agreement, or organizations that in combination represent the majority of such individuals.

(e) *Examples.* The operation of the provisions of this section may be illustrated by the following examples.

Example 1. Plan A has 500 participants, in the following 4 types of participants under paragraph (b)(2) of this section:

Type of participants	Total number	Nexus group	Non-nexus
1. Individuals working under CBAs	320 (64%)	320 (64%)	0
2. Retirees	50 (10%)	50 (10%)	0
3. ''Special Class''—Non-CBA, non-alumni	100 (20%)	50 (10%)	50 (10%)
4. Non-nexus participants	30 (6%)	0	30 (6%)
Total	500 (100%)	420 (84%)	80 (16%)

(2) In determining whether at least 80% of Plan A's participant population is made up of individuals with the required nexus to the collective bargaining agreement as required by paragraph (b)(2) of this section, the Plan may count as part of the nexus group only 50 (10% of the total plan population) of the 100 individuals described in paragraph (b)(2)(viii) of this section. That is because the number of individuals meeting the category of individuals in paragraph (b)(2)(viii) exceeds 10% of the total participant population by 50 individuals. The paragraph specifies that those individuals who are deemed to be nexus individuals because they are the type of individuals described in paragraph (b)(2)(viii) in excess of 10% of the total plan population may not be counted in the nexus group. Here, 50 of the 100 individuals employed by signatory employers, but not covered by the collective bargaining agreement, are counted as nexus individuals and 50 are not counted as nexus individuals. Nonetheless, the Plan satisfies the 80% criterion under paragraph (b)(2) because a total of 420 (320 individuals covered by the collective bargaining agreement, plus 50 retirees, plus 50 individuals employed by signatory employers), or 84%, of the 500 participants in Plan A are individuals who may be counted as nexus participants under paragraph (b)(2). Beneficiaries (*e.g.,* spouses, dependent children, etc.) are not counted to determine whether the 80% test has been met.

Example 2. (1) International Union MG and its Local Unions have represented people working primarily in a particular industry for over 60 years. Since 1950, most of their collective bargaining agreements have called for those workers to be covered by the National MG Health and Welfare Plan. During that time, the number of union-represented workers in the industry, and the number of active participants in the National MG Health and Welfare Plan, first grew and then declined. New Locals were formed and later were shut down. Despite these fluctuations, the National MG Health and Welfare Plan meets the factors described in paragraphs (b)(4)(iii) and (iv) of this section, as the plan has been in existence pursuant to collective bargaining agreements to which the International Union and its affiliates have been parties, since prior to January 1, 1983.

(2) Assume the same facts, except that on January 1, 1999, International Union MG merged with International Union RE to form International Union MRGE. MRGE and its Locals now represent the active participants in the National MG Health and Welfare Plan and in the National RE Health and Welfare Plan which, for 45 years, had been maintained under collective bargaining agreements negotiated by International Union

RE and its Locals. Since International Union MRGE is the continuation of, and successor to, the MG and RE unions, the two plans continue to meet the factors in paragraphs (b)(4)(iii) and (iv) of this section. This also would be true if the two plans were merged.

Example 3. Assume the same facts as in paragraph (2) of Example 2 with respect to International Union MG. However, in 1997, one of its Locals and the employers with which it negotiates agree to set up a new multiemployer health and welfare plan that only covers the individuals represented by that Local Union. That plan would not meet the factor in paragraph (b)(4)(iii) of this section, as it has not been incorporated or referenced in collective bargaining agreements, dating back to before January 1, 1983.

Example 4. (1) Pursuant to a collective bargaining agreement between various employers and Local 2000, the employers contribute $2 per hour to the Fund for every hour that a covered employee works under the agreement. The covered employees are automatically entitled to health and disability coverage from the Fund for every calendar quarter the employees have 300 hours of additional covered service in the preceding quarter. The employees do not need to make any additional contributions for their own coverage, but must pay $250 per month if they want health coverage for their dependent spouse and children. Because the employer payments cover 100% of the required contributions for the employees' own coverage, the Local 2000 Employers Health and Welfare Fund meets the ''75% employer payment'' factor under paragraph (b)(3)(vi) of this section.

(2) Assume, however, that the negotiated employer contribution rate was $1 per hour, and the employees could only obtain health coverage for themselves if they also elected to contribute $1 per hour, paid on a pre-tax basis through salary reduction. The Fund would not meet the 75% employer payment factor, even though the employees' contributions are treated as employer contributions for tax purposes. Under ERISA, and therefore under this section, elective salary reduction contributions are treated as employee contributions. The outcome would be the same if a uniform employee contribution rate applied to all employees, whether they had individual or family coverage, so that the $1 per hour employee contribution qualified an employee for his or her own coverage and, if he or she had dependents, dependent coverage as well.

Example 5. Arthur is a licensed insurance broker, one of whose clients is Multiemployer Fund M, a partially self-funded plan. Arthur takes bids from insurance companies on behalf of Fund M for the insured portion of its coverage, helps the trustees to evaluate the bids, and places the Fund's health insurance coverage with the carrier that is selected. Arthur also assists the trustees of Fund M in preparing material to explain the plan and its benefits to the participants, as well as in monitoring the insurance company's performance under the contract. At the Trustees' request, Arthur meets with a group of employers with which the union is negotiating for their employees' coverage under Fund M, and he explains the cost structure and benefits that Fund M provides. Arthur is not engaged in marketing within the meaning of paragraph (c)(1) of this section, so the fact that he provides these administrative services and sells insurance to the Fund itself does not affect the plan's status as a plan established or maintained under or pursuant to a collective bargaining agreement. This is the case, whether or how he is compensated.

Example 6. Assume the same facts as Example 5, except that Arthur has a group of clients unrelated to the employees covered by or the employers bound to the collective bargaining agreement, whose insurance carrier has withdrawn from the market in their locality. He persuades them to retain him to find them other coverage. The group of clients has no relationship with the labor union that represents the participants in Fund M. However, Arthur offers them coverage under Fund M, and persuades the Fund's Trustees to allow the client group to join Fund M in order to broaden Fund M's contribution base. Arthur's activities in obtaining coverage for the unrelated group under Fund M constitutes marketing through an insurance producer, which makes Fund M a MEWA under paragraph (c)(1) of this section.

Example 7. (1) Union A represents thousands of construction workers in a three-state geographic region. For many years, Union A has maintained a standard written collective bargaining agreement with several hundred large and small building contractors, covering wages, hours, and other terms and conditions of employment for all work performed in Union A's geographic territory. The terms of those agreements are negotiated every three years between Union A and a multiemployer Association, which signs on behalf of those employers who have delegated their bargaining authority to the Association. Hundreds of other employers—including both local and traveling contractors—have chosen to become bound to the terms of Union A's standard area agreement for various periods of time and in various ways, such as by signing short-form binders or ''me too'' agreements, executing a single job or project labor agreement, or entering into a subcontracting arrangement with a signatory employer. All of these employ individuals represented by Union A and contribute to Plan A, a self-insured multiemployer health and welfare plan established and maintained under Union A's standard area agreement. During the past year, the trustees of Plan A have brought lawsuits against several signatory employers seeking contributions allegedly owed, but not paid to the trust. In defending that litigation, a number of employers have sworn that they never intended to operate as union contractors, that their employees want nothing to do with Union A, that Union A procured their assent to the collective bargaining agreement solely by threats and fraudulent misrepresentations, and that Union A has failed to file certain reports required by the Labor Management Reporting and Disclosure Act. In at least one instance, a petition for a decertification election has been filed with the National Labor Relations Board.

(2) In this example, Plan A qualifies for the regulatory finding that it is a multiemployer plan established and maintained under or pursuant to one or more collective bargaining agreements, assuming that its participant population satisfies the 80% test of paragraph (b)(2) of this section and that none of the disqualifying factors in paragraph (c) of this section is present. Plan A's status for the purpose of this section is not affected by the fact that some of the employers who deal with Union A have challenged Union A's conduct, or have disputed under labor statutes and legal doctrines other than ERISA section 3(40) the validity and enforceability of their putative contract with Union A, regardless of the outcome of those disputes.

Example 8. (1) Assume the same facts as Example 7. Plan A's benefits consultant recently entered into an arrangement with the Medical Consortium, a newly formed organization of health care providers, which allows the Plan to offer a broader range of health services to Plan A's participants while achieving cost savings to the Plan and to participants. Union A, Plan A, and Plan A's consultant each have added a page to their websites publicizing the new arrangement with the Medical Consortium. Concurrently, Medical Consortium's website prominently publicizes its recent affiliation with Plan A and the innovative services it makes available to the Plan's participants. Union A has mailed out informational packets to its members describing the benefit enhancements and encouraging election of family coverage. Union A has also begun distributing similar material to workers on hundreds of non-union construction job sites within its geographic territory.

(2) In this example, Plan A remains a plan established and maintained under or pursuant to one or more collective bargaining agreements under section 3(40) of ERISA. Neither Plan A's relationship with a new organization of health care providers, nor the use of various media to publicize Plan A's attractive benefits throughout the area served by Union A, alters Plan A's status for purpose of this section.

Example 9. (1) Assume the same facts as in Example 7. Union A undertakes an area-wide organizing campaign among the employees of all the health care providers who belong to the Medical Consortium. When soliciting individual employees to sign up as union members, Union A distributes Plan A's information materials and promises to bargain for the same coverage. At the same time, when appealing to the employers in the Medical Consortium for voluntary recognition, Union A promises to publicize the Consortium's status as a group of unionized health care service providers. Union A eventually succeeds in obtaining recognition based on its majority status among the employees working for Medical Consortium employers. The Consortium, acting on behalf of its employer members, negotiates a collective bargaining agreement with Union A that provides terms and

conditions of employment, including coverage under Plan A.

(2) In this example, Plan A still meets the criteria for a regulatory finding that it is collectively bargained under section 3(40) of ERISA. Union A's recruitment and representation of a new occupational category of workers unrelated to the construction trade, its promotion of attractive health benefits to achieve organizing success, and the Plan's resultant growth, do not take Plan A outside the regulatory finding.

Example 10. (1) Assume the same facts as in Example 7. The Medical Consortium, a newly formed organization, approaches Plan A with a proposal to make money for Plan A and Union A by enrolling a large group of employers, their employees, and self-employed individuals affiliated with the Medical Consortium. The Medical Consortium obtains employers' signatures on a generic document bearing Union A's name, labeled ''collective bargaining agreement,'' which provides for health coverage under Plan A and compliance with wage and hour statutes, as well as other employment laws. Employees of signatory employers sign enrollment documents for Plan A and are issued membership cards in Union A; their membership dues are regularly checked off along with their monthly payments for health coverage. Self-employed individuals similarly receive union membership cards and make monthly payments, which are divided between Plan A and the Union. Aside from health coverage matters, these new participants have little or no contact with Union A. The new participants enrolled through the Consortium amount to 23% of the population of Plan A during the current Plan Year.

(2) In this example, Plan A now fails to meet the criteria in paragraphs (b)(2) and (b)(3) of this section, because more than 20% of its participants are individuals who are not employed under agreements that are the product of *bona fide* collective bargaining relationship and who do not fall within any of the other nexus categories set forth in paragraph (b)(2). Moreover, even if the number of additional participants enrolled through the Medical Consortium, together with any other participants that did not fall within any of the nexus categories, did not exceed 20% of the total participant population under the plan, the circumstances in this example would trigger the disqualification of paragraph (c)(2) of this section, because Plan A now is being maintained under a substantial number of agreements that are a ''scheme, plan, stratagem or artifice of evasion'' intended primarily to evade compliance with state laws and regulations pertaining to insurance. In either case, the consequence of adding the participants through the Medical Consortium is that Plan A is now a MEWA for purposes of section 3(40) of ERISA and is not exempt from state regulation by virtue of ERISA.

(f) *Cross-reference.* See part 2570, subpart G of this chapter for procedural rules relating to proceedings seeking an Administrative Law Judge finding by the Secretary under Section 3(40) of ERISA.

(g) *Effect of proceeding seeking Administrative Law Judge Section 3(40) finding.*

(1) An Administrative Law Judge finding issued pursuant to the procedures in part 2570, subpart G of this chapter, will constitute a finding that the employee welfare benefit plan at issue in that proceeding is established or maintained under or pursuant to an agreement that the Secretary finds to be a collective bargaining agreement for purposes of Section 3(40) of ERISA.

(2) Nothing in this section or in part 2570, subpart G of this chapter is intended to have any effect on applicable law relating to stay or delay of a state administrative or court proceeding or enforcement of a subpoena.

(h) *Effective date.* This regulation is effective December 26, 2000.

Signed this 16th day of October 2000.

Leslie B. Kramerich,

Acting Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 00–27044 Filed 10–26–00; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2570

RIN 1210–AA48

Procedures for Administrative Hearings Regarding Plans Established or Maintained Pursuant to Collective Bargaining Agreements Under Section 3(40)(A) of ERISA

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Proposed rule.

SUMMARY: This document contains proposed rules under the Employee Retirement Income Security Act of 1974, as amended (ERISA), describing procedures for administrative hearings to obtain a determination by the Secretary of Labor (Secretary) as to whether a particular employee welfare benefit plan is established or maintained under or pursuant to one or more collective bargaining agreements for purposes of section 3(40) of ERISA. The procedure for administrative hearings would be available only in situations where the jurisdiction or law of a state has been asserted against a plan or other arrangement that contends it meets the exception for plans established or maintained under or pursuant to one or more collective bargaining agreements. Under Section 3(40) of ERISA, the Secretary may make a determination that an employee welfare benefit plan is a collectively bargained plan, and thereby excluded from the definition of ''multiple employer welfare arrangements'' under section 3(40) of ERISA, which are otherwise subject to state regulation of multiple employer welfare arrangements as provided for by ERISA. A separate document is being published today in the **Federal Register** containing proposed rules setting forth the criteria for determining when an employee welfare benefit plan is established or maintained under or pursuant to one or more collective bargaining agreements for purposes of section 3(40) of ERISA. If adopted, these proposed rules would affect employee welfare benefit plans, their sponsors, participants, and beneficiaries as well as service providers to plans.

DATES: Written comments concerning the proposed regulation must be received by December 26, 2000.

ADDRESSES: Interested persons are invited to submit written comments (preferably three copies) concerning this proposed regulation to: Pension and Welfare Benefits Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (Attention: Proposed Regulation Under Section 3(40)). All submissions will be open to public inspection at the Public Documents Room, Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Goodman, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–8671. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

This document contains proposed rules describing procedures for administrative hearings to obtain a determination by the Secretary as to whether a particular employee benefit plan is established or maintained under or pursuant to one or more collective bargaining agreements for purposes of section 3(40) of ERISA. The procedure for administrative hearings would be available only in situations where the jurisdiction or law of a state has been asserted against a plan or other arrangement that contends it meets the exception for plans established or maintained under or pursuant to one or

more collective bargaining agreements. These rules are modeled on the procedures set forth in sections 29 CFR 2570.60 through 2570.71 regarding civil penalties under section 502(c)(2) of ERISA relating to reports required to be filed under ERISA section 104(b)(4).

B. The 1995 Notice of Proposed Rulemaking

The history of section 3(40) of ERISA and the Department's efforts to implement this provision is fully outlined in the proposed rule establishing the regulatory criteria under section 3(40), published separately in this issue of the **Federal Register**. On August 1, 1995, the Department published a Notice of Proposed Rulemaking on Plans Established or Maintained Pursuant to Collective Bargaining Agreements in the **Federal Register.** (60 FR 39209) (1995 NPRM). The Department proposed criteria and a process for determining whether an employee benefit plan is established or maintained under or pursuant to one or more agreements that the Secretary finds to be collective bargaining agreements for purposes of section 3(40) of ERISA. The approach proposed in the 1995 NPRM did not provide for individual findings by the Department. The Department received numerous comments on the NPRM. Commenters objected to having state regulators determine whether a particular agreement was a collective bargaining agreement.

C. Regulatory Negotiation

A discussion of the process the Department followed to establish the ERISA Section 3(40) Negotiated Rulemaking Advisory Committee (the Committee) to recommend a rule implementing section 3(40) is set forth in the proposed rule establishing the regulatory criteria under section 3(40), published separately in this issue of the **Federal Register**.

The goal of the Committee was to develop a substantive rule to help the states, insurers, plans, and organized labor determine which entities are indeed plans established or maintained under or pursuant to one or more collective bargaining agreements, and therefore not subject to state regulation, under Section 3(40) of ERISA. These procedural rules, in addition to the substantive rule published simultaneously in this issue of the **Federal Register**, resulted from the Committee's determination that the availability of an individualized procedure before a Department of Labor Administrative Law Judge (ALJ), and for appeals of an ALJ decision to the Secretary or the Secretary's delegate, would be appropriate for the resolution of a dispute regarding an entity's legal status in situations where the jurisdiction or law of a state has been asserted against a plan or other arrangement that contends it meets the exception for plans established or maintained under or pursuant to one or more collective bargaining agreements.

With the exception of sections F–L of the preamble, the text of the proposed rule and preamble is the Committee's consensus.

D. Overview of the Proposed Regulations

This document contains proposed regulations that establish procedures for hearings before an ALJ with respect to individualized determinations under Section 3(40) of ERISA. In this regard, the Secretary has established the Pension and Welfare Benefits Administration (PWBA) within the Department for the purpose of carrying out the Secretary's responsibilities under ERISA. *See* Secretary of Labor's Order 1–87, 52 FR 13139 (April 21, 1987).

The Department has also published rules of practice and procedure for administrative hearings before the Office of the Administrative Law Judges in Subpart A of 29 CFR Part 18, 48 FR 32538 (1983). As explained in 29 CFR 18.1, those provisions generally govern administrative hearings before ALJs assigned to the Department and are intended to provide maximum uniformity in the conduct of administrative hearings. However, in the event of an inconsistency or conflict between the provisions of Subpart A of 29 CFR Part 18 and a rule or procedure required by statute, executive order, or regulation, the latter controls.

In drafting proposed regulatory language, the Committee reviewed the applicability of the provisions of Subpart A of 29 CFR Part 18 to the ALJ determination whether an employee benefit plan is a collectively bargained plan under section 3(40) of ERISA, and the Department, following the recommendations of the Committee, has decided to adopt many, though not all, of the provisions of Subpart A of 29 CFR Part 18 for these proceedings. These proposed rules relate specifically to procedures for ALJ determinations under section 3(40) of ERISA and are controlling to the extent that they are inconsistent with any portion of Subpart A of 29 CFR Part 18. Accordingly, where not otherwise specified in these proposed regulations, adjudications relating to determinations under ERISA section 3(40) will be governed by the following sections of Subpart A of 29 CFR Part 18:

§ 18.4 Time Computations.

§ 18.5 (c) through (e) Responsive pleadings—Answer and Request for Hearing.

§ 18.6 Motions and Requests.

§ 18.7 Prehearing Statements.

§ 18.8 Prehearing Conferences.

§ 18.9 Consent Order or Settlement; Settlement Judge Procedure.

§ 18.11 Consolidation of Hearings.

§ 18.12 Amicus Curiae.

§ 18.13 Discovery Methods.

§ 18.14 Scope of Discovery.

§ 18.15 Protective Orders.

§ 18.16 Supplementation of Responses.

§ 18.17 Stipulations Regarding Discovery.

§ 18.18 Written Interrogatories to Parties.

§ 18.19 Production of Documents and Other Evidence; Entry Upon Land for Inspection and Other Purposes; and Physical and Mental Examination.

§ 18.20 Admissions.

§ 18.21 Motion to Compel Discovery.

§ 18.22 Depositions.

§ 18.23 Use of Depositions at Hearings.

§ 18.24 Subpoenas.

§ 18.25 Designation of Administrative Law Judge.

§ 18.26 Conduct of Hearings.

§ 18.27 Notice of Hearing.

§ 18.28 Continuances.

§ 18.29 Authority of Administrative Law Judge.

§ 18.30 Unavailability of Administrative Law Judge.

§ 18.31 Disqualification.

§ 18.32 Separation of Functions.

§ 18.33 Expedition.

§ 18.34 Representation.

§ 18.35 Legal assistance.

§ 18.36 Standards of Conduct.

§ 18.37 Hearing Room Conduct.

§ 18.38 Ex Parte Communications.

§ 18.39 Waiver of Right to Appear and Failure to Participate or to Appear.

§ 18.40 Motion for Summary Decision.

§ 18.43 Formal Hearings.

§ 18.44 [Reserved].

§ 18.45 Official Notice.

§ 18.46 In Camera and Protective Orders.

§ 18.47 Exhibits.

§ 18.48 Records in Other Proceedings.

§ 18.49 Designation of Parts of Documents.

§ 18.50 Authenticity.

§ 18.51 Stipulations.

§ 18.52 Record of Hearings.

§ 18.53 Closing of Hearings.

§ 18.54 Closing the Record.

§ 18.55 Receipt of Documents After Hearing.

§ 18.56 Restricted Access.

§ 18.58 Appeals.

§ 18.59 Certification of Official Record.

This proposed rule is designed to maintain the maximum degree of uniformity with the rules set forth in Subpart A of 29 CFR Part 18, consistent with the need for an expedited procedure, but also recognizing the special characteristics of proceedings under ERISA section 3(40). For purposes of clarity, where a particular section of the existing procedural rules would be affected by these proposed rules, the entire section of the existing procedural rules (with the appropriate modifications) has been set out in this document. Thus, only a portion of the provisions of the procedural rules set forth below contain changes from, or additions to, the rules in Subpart A of 29 CFR Part 18. The Department seeks suggestions on ways to facilitate and expedite the process by electronic means or otherwise. The specific modifications to the rules in Subpart A of 29 CFR Part 18, and their relationship to the conduct of these proceedings generally, are outlined below.

E. Discussion of the Proposed Rules

1. In General

Generally, the proposed rule in section 2510.3–40, also being published today, sets forth the finding by the Secretary as to what constitutes an employee welfare benefit plan established or maintained under or pursuant to one or more collective bargaining agreements under section 3(40) of ERISA. The availability of the procedures in these proposed rules is limited. The applicability of these procedural rules under section 3(40) of ERISA is set forth in section 2570.130. In this regard, it should be noted that these procedural rules apply only to adjudicatory proceedings before ALJs of the United States Department of Labor. Pursuant to proposed rule section 2570.131, contained in this notice, an adjudicatory proceeding before an ALJ may be commenced only when the jurisdiction or law of a state has been asserted against a plan or other arrangement that contends it meets the exception for plans established or maintained under or pursuant to collective bargaining. Only an entity against whom the jurisdiction or law of a state has been asserted may initiate adjudicatory proceedings before an ALJ under these rules.

The definitions section (2570.132) of these rules incorporates the basic adjudicatory principles set forth in Subpart A of 29 CFR Part 18, but includes terms and concepts of specific relevance to proceedings under section 3(40) of ERISA. In this respect, it differs from its more general counterpart at section 18.2 of this title. In particular, section 2570.132(f) states that the term ''Secretary'' means the Secretary of Labor and includes various persons to whom the Secretary may delegate authority. This definition is not intended to suggest any limitation on the authority that the Secretary has delegated to the Assistant Secretary for Pension and Welfare Benefits. As noted above, the Secretary of Labor has delegated most of her authority under ERISA to the Assistant Secretary for Pension and Welfare Benefits. Thus, the Department contemplates that the duties assigned to the Secretary under these proposed procedural regulations will in fact be discharged by the Assistant Secretary for Pension and Welfare Benefits or a properly authorized delegate.

2. Proceedings Before Administrative Law Judges

Section 2570.133 (relating to parties to the proceedings) and section 2570.94 (relating to filing and contents of a petition) contemplate that adjudicatory proceedings will be initiated with the filing by an entity of a petition for a determination under section 3(40) of ERISA. The service of documents by the parties to an adjudicatory proceeding, as well as by the ALJ, will be governed by section 2570.135 of these rules.

In general, the rules in Subpart A of 29 CFR Part 18 concerning the computation of time, pleadings and motions, and prehearing conferences and statements, are adopted in these procedures for adjudications under section 3(40) of ERISA. The proposed rule on the designation of parties (2570.133) differs from its counterpart under section 18.10 of this title in that it specifies that the parties in these proceedings will be limited to (i) the entity filing a petition under section 2750.134 (the plan or other arrangement against whom state law or jurisdiction has been asserted); (ii) the state or states whose law or jurisdiction has been asserted to apply to the entity; (iii) any individual party other than a state who has asserted that a particular state has jurisdiction over the entity, or whose law applies; and (iv) the Secretary of Labor.

Within 30 days after the service of the petition, any other party may file a response to the petition. Before that date, any state not named in the petition may intervene as of right, simply by giving written notice to the other parties and the ALJ. After that date, intervention by other states is permissive with consent of all parties or by order of the ALJ.

Section 2570.136, relating to expedited proceedings, permits any of the parties to move to shorten the time for the scheduling of a proceeding, including the time for conducting discovery. Paragraph (b) of section 2570.136 describes the information which must be set forth in support of a party's motion to expedite proceedings. Paragraph (c) of section 2570.136 prescribes the manner of service for purposes of this section, while paragraph (d) generally sets a time limit of ten days from the date of service of the motion for all other parties to file an opposition in response to the motion. Paragraph (e) permits an ALJ to advance the schedule for pleadings, discovery, prehearing conferences and the adjudicatory hearing after receiving the parties' statements in response to the initial motion, but requires that the ALJ give notice of at least five business days in advance of a hearing on the merits, unless all parties consent otherwise to an earlier hearing. Paragraph (f) of section 2570.136 provides that when an expedited hearing is held, the ALJ must issue a decision within 20 working days after receipt of the transcript of an oral hearing, or within 20 working days after the filing of all documentary evidence, if no oral hearing is conducted.

The proposed rule on the allocation of the burden of proof (2570.137) provides that for purposes of a final decision under section 2570.138 (decision of administrative law judge) and section 2570.139 (review by the Secretary), the petitioner has the ultimate burden of establishing each of the elements of subparagraph (b)(4) of section 2570.134, relating to whether the entity qualifies

as an employee welfare benefit plan established or maintained under or pursuant to one or more collective bargaining agreements. At the outset, however, the petitioner would meet its burden of going forward when it makes a *prima facie* showing that it satisfies the criteria of 29 CFR 2510.3–40(b).

Paragraph (a) of section 2570.138, relating to the decision of the ALJ, permits the ALJ to allow parties to file proposed findings of fact, conclusions of law and a proposed order together with supporting briefs. Paragraph (b) of section 2570.138 permits the ALJ to request that the parties present oral arguments in lieu of briefs and, in such an instance, requires the ALJ to issue a decision at the close of oral argument. Paragraph (c) of section 2570.138 provides that the ALJ shall issue a decision, containing findings of fact and conclusions of law, and reasons supporting the same, no later than 30 days, or as soon as possible thereafter, after the receipt of proposed findings of fact, conclusions of law and a proposed order, or within 30 days of receipt of an agreement containing consent findings and order disposing of the whole of the disputed issue. Paragraph (c) of section 2570.138 further provides, among other things, that the ALJ's order be based on the whole record, and that it be supported by reliable and probative evidence.

The proposed rule concerning the review by the Secretary of the decision of the ALJ (2570.139) differs from its counterpart at section 18.57 of this title in that it states that the decision of the ALJ in a Section 3(40) Finding Procedure shall become the final decision of the Secretary unless a timely appeal is filed. The procedures for appeals of ALJ decisions under section 3(40) of ERISA are governed solely by the rules set forth in section 2570.139, and without any reference to the appellate procedures contained in Subpart A of 29 CFR Part 18. Paragraph (a) of section 2570.139 establishes a 20-day time limit within which such appeals must be filed. Paragraph (b) of section 2570.139 requires that the issues for appeal be stated with specificity in a party's request for review, and that the request for appeal be filed on all parties to the proceeding. Paragraph (c) of section 2570.139 provides that review by the Secretary shall not be *de novo,* but rather on the basis of the record before the ALJ. Paragraph (e) of section 2570.139 states that the decision of the Secretary on such an appeal shall be a final agency action within the meaning of 5 U.S.C. 704. As noted above, the authority of the Secretary with respect to the appellate procedures has been delegated to the Assistant Secretary for Pension and Welfare Benefits. As required by the Administrative Procedure Act (5 U.S.C. 552(a)(2)(A)), all final decisions of the Department under section 502(c)(5) of ERISA shall be compiled in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.

Economic Analysis Under Executive Order 12866

Under Executive Order 12866, the Department must determine whether the regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB). OMB has determined that this proposed regulation is significant within the meaning of section 3(f)(4) of the Executive Order. Consistent with the Executive Order, the Department has undertaken an assessment of the costs and benefits of this regulatory action.

The analysis is detailed below.

Summary

Pursuant to the requirements of Executive Order 12866 the Department undertook an analysis of the economic impact of this proposed regulation. Based on its analysis, the Department has concluded that the proposed regulation's benefits exceed its costs although neither has been quantified.[1] The Department seeks data on benefits and costs. The Department has concluded that the proposed regulation will benefit plans, states, insurers, and organized labor by reducing the cost of resolving some disputes over states' jurisdiction to regulate certain multiple employer welfare benefit arrangements, likely facilitating the conduct of hearings, reducing disputes over plans' and arrangements' status, and by improving the efficiency and ensuring the consistency in determinations of such jurisdiction.

The regulation establishes procedures for administrative hearings to obtain a determination from the Secretary as to whether a multiple employer welfare benefit plan is established or maintained under or pursuant to one or more collective bargaining agreements. Plans so established or maintained are excluded from the definition of multiple employer welfare arrangements (MEWAs) and consequently are not subject to state regulation. When state jurisdiction is asserted over entities that claim this collective bargaining exclusion, they would have the option of using these procedures to resolve the dispute. In the absence of the promulgation of specific criteria which would form the basis of a determination concerning whether a given plan is established or maintained pursuant to a collective bargaining agreement, such disputes have generally been resolved in courts. It is expected that giving entities over whom state jurisdiction has been asserted the opportunity to resolve disputes via the procedures established by the proposed regulation will generally be more efficient and less costly than resolving them in courts when these procedures are chosen. It is also expected that determinations made in the single, specialized venue of the administrative hearings provided for in the proposed regulation may be more consistent than determinations made in multiple, non-specialized court venues.

Background

A multiple employer welfare arrangement (MEWA) is a group benefit program which is geared toward providing welfare benefits, most frequently to small employers and their employees. Because they provide health, life, disability or other welfare benefits, all MEWAs, whether or not they are ERISA-covered employee benefit plans, are subject to state insurance regulation unless they fall

[1] See below for data relevant to the number of MEWAs and collectively bargained plans and the costs of filing petitions.

under one of the statutory exceptions to ERISA's MEWA definition. The exception relevant here states that the term MEWA does not include plans which are established or maintained under or pursuant to one or more agreements which the Secretary of Labor (the Secretary) finds to be collective bargaining agreements. Some unscrupulous MEWA operators have taken advantage of the ''collective bargaining agreements'' exception to establish sham MEWAs which are often underfunded and incapable of paying employees health benefit claims. A General Accounting Office Report, published in March 1992, entitled, ''*Employee Benefits: States Need Labor's Help Regulating Multiple Employer Welfare Arrangements*'' (GAO/HRD–92–40) stated that, ''Between January 1988 and June 1991, MEWAs left at least 398,000 participants and their beneficiaries with more than $124 million in unpaid claims and many other participants without insurance. More than 600 MEWAs failed to comply with state insurance laws, and some violated criminal statutes.'' The Department is proposing today, two regulations, one defining what is a plan established or maintained under or pursuant to one or more collective bargaining agreements (29 CFR 2510.3–40), and this regulation, providing for a procedure before a Department Administrative Law Judicial Hearing (ALJ) concerning the legal status of an entity when a state's jurisdiction has been asserted over or against that entity.

Historically, the usual means for determining a plan's legal status under state insurance laws has been a judgment in a court of law. The 1992 GAO Report noted that although most states were able to establish jurisdiction without going to court, thirteen states had found it necessary to establish jurisdiction in a court of law. States described these legal battles as costly in terms of staff and time. Moreover, states claimed that, on occasion, fraudulent MEWAs claimed the collective bargaining agreement exemption in order to stall state action and continue collecting premiums from unsuspecting employers. States contacted by GAO recommended that the Department clarify ERISA's collective bargaining preemption provision in a regulation. Ultimately, the Report recommended, ''that the Secretary of Labor direct the Assistant Secretary for PWBA to * * * (2) improve procedures to quickly answer questions about such issues as ERISA preemption and state regulatory authority, thus enabling states to more aggressively deal with problem MEWAs.''

Recognizing that additional guidance was needed, in 1995 the Department proposed criteria and a process for determining whether an employee benefit plan was established or maintained under or pursuant to one or more agreements that the Secretary finds to be a collective bargaining agreement. The approach proposed in the 1995 NPRM did not provide for individual findings by the Department but instead relied on state regulators to make the determination as to whether a collective bargaining agreement existed—a procedure which drew negative comments from the public.

Convinced that guidance was still needed, in 1998 the Secretary established the ERISA Section 3(40) Negotiated Rulemaking Advisory Committee under the Negotiated Rulemaking Act and the Federal Advisory Committee Act. The Committee included representatives from labor unions, multiemployer plans, state governments, employers, third party administrators, insurance carriers, brokers and agents providing health care products and services, and the National Railway Labor Conference. As a result of the Committee's work and as an alternative to the 1995 proposed regulation, the Department is proposing two regulations: this regulation, which establishes procedures for administrative hearings to obtain a determination from the Secretary as to whether a plan is established or maintained under or pursuant to one or more collective bargaining agreements, and its accompanying regulation, which sets forth standards for distinguishing whether a plan is so established or maintained.

In formulating the process for an administrative hearing, the Committee reviewed the applicability of the rules of practice and procedure currently used by the Office of Administrative Law Judges (ALJs) and adopted many, though not all, of the provisions. These proposed rules relate specifically to procedures for ALJ determinations under section 3(40) of the Act and are controlling to the extent that they are inconsistent with any portion of the ALJ published rules of practice and procedure.

In order to initiate adjudicatory proceedings, an entity will be required to file with the ALJ a petition for a determination under section 3(40) of the Act. The petition shall: (1) Provide the name and address of the entity for which the petition is filed; (2) provide the names and addresses of the plan administrator and plan sponsor(s) of the plan or other arrangement for which the finding is sought; (3) identify the state or states whose law or jurisdiction the petitioner claims has been asserted over the plan or other arrangement at issue, and provide the addresses and names of responsible officials; (4) include affidavits or other written evidence showing that (i) state jurisdiction has been asserted over or legal process commenced against the plan or other arrangement pursuant to state law; (ii) the plan is an employee welfare benefit plan as defined at section 3(1) of ERISA and is covered by ERISA pursuant to section 4 of the Act; (iii) the plan is established or maintained for the purpose of offering or providing benefits described in section 3(1) of ERISA to employees of two or more employers (including one or more self-employed individuals) or their beneficiaries; (iv) the plan satisfies the criteria in new section 3–40(b); and (v) service has been made as provided by this proposed regulation; (5) affidavits shall set forth such facts as would be admissible in evidence in a proceeding under part 18 of this title and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The affidavit or other written evidence must set forth specific facts showing the factors required under subparagraph (b)(4). In addition, copies of all documents shall be served on all parties of record, attorneys for the parties, and the Secretary. If an entity chooses to request an expedited proceeding, the motion must be made in writing, with a description of the circumstances necessitating an expedited hearing, the harm which would result if the motion were denied, and supporting affidavits.

The section of the proposed rule on the allocation of the burden of proof provides that for purposes of a final decision by the ALJ (and for purposes of review by the Secretary) the petitioner has the ultimate burden of establishing each of the elements relating to whether the entity qualifies as an employee welfare benefit plan established or maintained under or pursuant to one or more collective bargaining agreements. The decision of the ALJ is final unless an appeal is filed with the Secretary within twenty days. A request for review by the Secretary must state the issue(s) in the administrative law judge's final decision upon which review is sought and shall be served on all parties to the proceeding. The review by the Secretary is the final agency action.

Resolving Disputes Efficiently

An administrative hearing under the proposed regulation will economically

benefit the small number of plans or arrangements that dispute state-asserted jurisdiction. The Department foresees improved efficiencies through use of administrative hearings that are used at the option of entities over whom state jurisdiction has been asserted. An administrative hearing will allow the various parties to obtain a decision in a more timely and efficient manner than is customary in federal or state court proceedings and will provide cost savings for the plan or arrangement, its participating employers and employees.

For purposes of this economic analysis, the Department considered the cost of obtaining determinations of plans' or arrangements' status and states' jurisdiction under the proposed regulation relative to the cost of obtaining such determinations in the current environment. The current practice for determining whether a plan is established or maintained under or pursuant to a collective bargaining agreement is for a plan or state to obtain a decision in a federal or state court. Accordingly, this analysis relates to determining plans' or arrangements' legal status through adjudication.

The Department's analysis of costs involved in adjudication in a federal or state court versus an administrative hearing assumes that entities and states incur a baseline cost to resolve the question of their status in federal or state court. This baseline cost includes, but is not limited to, expenditures for document production, attorney fees, filing fees, depositions, etc. Because a determination of jurisdiction in a federal or state court may be determined in motions or pleadings in cases where jurisdiction is not the primary litigated issue, the direct cost of using the courts as a decision-maker for jurisdictional issues only is too variable to specify; however, custom and practice indicate that the cost of an administrative hearing will be similar to or will represent a cost savings compared with the baseline cost of litigating in federal or state court.

Because the procedures and evidentiary rules of an administrative hearing generally track the Federal Rules of Civil Procedure and of Evidence, document production will be similar for both an administrative hearing and for a federal or state court. Documents such as by-laws, administrative agreements, and collective bargaining agreements, etc., are generally kept in the normal course of business for welfare benefit plans and it is unlikely that there will be any additional cost for an administrative hearing beyond that which would be required in preparation for litigation in a federal or state court. Certain administrative hearing practices and other new procedures initiated by this regulation may, however, represent a cost savings over litigation. For example, neither party need employ an attorney; the prehearing exchange is short and general; either party may move to shorten the time for the scheduling of a proceeding, including the time for conducting discovery; the general formality of the hearing may vary, particularly depending on whether the petitioner is appearing *pro se;* an expedited hearing is possible; and, the ALJ generally has 20 working days after receipt of the transcript of an oral hearing or after the filing of all documentary evidence if no oral hearing is conducted to reach a decision.

The Department cannot predict that any or all of these conditions will exist, nor can it predict that any of these factors represent a cost-savings, but, it is likely that the knowledge of state and federal laws which the ALJ brings to the decision-making process will facilitate the hearing, reduce costs, and introduce a consistent standard to what has been a confusion of jurisdictional decisions. ALJ case histories will educate MEWAs and states by articulating the characteristics of a collectively bargained plan, which clarity will in turn benefit participants and beneficiaries with secure contributions and paid-up claims. The Department welcomes comment on the comparative cost of a trial in federal or state court versus an administrative hearing on the issue of the legal status of a welfare benefit plan as it pertains to the existence of a plan that is established or maintained under or pursuant to an agreement or agreements that the Secretary finds to be collective bargaining agreements for purposes of section 3(40) of ERISA.

Determining Jurisdiction Accurately and Consistently

The proposed regulation that accompanies this one establishes criteria for determining whether a welfare benefit plan is established or maintained under or pursuant to one or more collective bargaining agreements. While the proposed criteria will largely eliminate confusion in determining whether a MEWA falls under the collective bargaining agreement exception, given the wide variety and constructs of agreements, MEWA operators and the states may still disagree about the legal status of an entity. For this reason, the Department is proposing this second regulation establishing procedures that permit, in certain limited circumstances, an entity to seek an administrative hearing to obtain a finding by the Secretary that a particular plan is established or maintained under or pursuant to one or more collective bargaining agreements.

Accurate and consistent determinations under this proposed regulation and the objective standards provided in the substantive proposal together are expected to reduce uncertainty and the incidence of disputes over plans' and arrangements' status. The Department has attributed expected cost savings from reductions in uncertainty and disputes to the substantive regulation, because that regulation sets forth the standards on which determinations will be based.

Efficiently and accurately determining the legal status of a plan or arrangement will also benefit employers and employees as it will provide greater assurance that the entity is complying with appropriate federal and state laws. Due at least in part to the interaction of federal and state requirements, historical compliance with the various requirements which apply to MEWAs has been shown to be inconsistent. Although the provisions of Titles I and IV of ERISA generally supersede state laws that relate to employee benefit plans, certain state laws which regulate insurance may apply to MEWAs, and knowledge of both federal and state requirements is necessary for consistency in determining plans' or arrangements' legal status. This is particularly important where these entities are doing business in more than one state and each state's laws may apply independently to the MEWAs doing business in that state. The Department believes that the administrative hearing process will provide for the uniform interpretation and application of both federal and state regulations and will avoid confusion resulting from a variety of jurisdictional procedures and laws. Employers and employees will benefit from an administrative decision by assurances as to which protections, be they federal or both state and federal, apply to their particular arrangement. The Department has attributed the net benefit from the reclassification of currently inaccurately classified plans or arrangements (and the consequent application of appropriate state or federal protections) to the substantive proposed regulation, which sets for the standards that will assure accurate classifications.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the

notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a proposed rule will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of analysis under the RFA, PWBA proposes to continue to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of the Employee Retirement Income Security Act of 1974 (ERISA), which permits the Secretary of Labor to prescribe simplified annual reports for pension plans which cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for exemptions or simplified annual reporting and disclosure for welfare benefit plans. Pursuant to the authority of section 104(a)(3), the Department has previously issued at 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46 and 2520.104b–10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans covering fewer than 100 participants and which satisfy certain other requirements.

Further, while some large employers may have small plans, in general most small plans are maintained by small employers. Thus, PWBA believes that assessing the impact of this proposed rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business which is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*). PWBA therefore requests comments on the appropriateness of the size standard used in evaluating the impact of this proposed rule on small entities.

On this basis, however, PWBA has preliminarily determined that this rule will not have a significant economic impact on a substantial number of small entities. In support of this determination, and in an effort to provide a sound basis for this conclusion, PWBA has prepared the following regulatory flexibility analysis.

(a) *Reason for the Action.* The Department proposes this regulation in order to establish a procedure for an administrative hearing so that states and entities will be able to obtain a determination by the Secretary as to whether a particular employee welfare benefit plan is established or maintained under or pursuant to one or more collective bargaining agreements for purposes of an exception to section 3(40) of ERISA.

(b) *Objectives.* The objective of the regulation is to make available to plans an individualized procedure for a hearing before a Department of Labor Administrative Law Judge, and for appeals of an ALJ decision to the Secretary or the Secretary's delegate, which would be appropriate for the resolution of a dispute regarding an entity's legal status in situations where the jurisdiction or law of a state has been asserted against a plan or other arrangement that contends it meets the exception for plans established or maintained under or pursuant to one or more collective bargaining agreements.

(c) *Estimate of Small Entities Affected.* For purposes of this discussion, the Department has deemed a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans which cover fewer than 100 participants. For this purpose, it is assumed that arrangements with fewer than 100 participants and which are (1) multiemployer collectively bargained group welfare benefit plans; (2) non-collectively bargained multiple employer group welfare benefit plans, or; (3) other multiple employer arrangements which provide welfare benefits, are small plans. PWBA believes that assessing the impact of this proposed rule on small plans is an appropriate substitute for evaluating the effect on small entities as that term is defined in the RFA. No small governmental jurisdictions will be affected.

Based on Form 5500 filings and available research, it is estimated that there are a possible 4,180 plans which can be classified as either collectively bargained plans or as MEWAs; however, PWBA estimates that a very small number of these arrangements will have fewer than 100 participants. By their nature, the affected arrangements must involve at least two employers, which decreases the likelihood of coverage of fewer than 100 participants. Also, underlying goals of the formation of these arrangements, such as gaining purchasing and negotiating power through economies of scale, improving administrative efficiencies, and gaining access to additional benefit design features, are not readily accomplished if the group of covered lives remains small.

While there are no statistics to determine the number of small plans among the 4,180 plans, based on the health coverage reported in the Employee Benefits Supplement to the 1993 Current Population Survey and on a 1993 Small Business Administration survey of retirement and other benefit coverages in small firms, research data indicate that there are more than 2.5 million private group health plans with fewer than 100 participants. Thus, the 4,180 collectively bargained plans or MEWAs, even if all were to have fewer than 100 participants, represent approximately one-tenth of one percent of all small group health plans.

The Department is not aware of any source of information indicating the number of instances in which state jurisdiction has been asserted over these entities, or the portion of those instances which involved the collective bargaining agreement exception. However, in order to develop an estimate of the number of plans which might seek to clarify their legal status by using an administrative hearing as proposed by this regulation, the Department examined the number of lawsuits to which the Department had previously been a party. While this number is not viewed as a measure of the incidence of the assertion of state jurisdiction, it is considered the only reasonable available proxy for an estimate of a maximum number of instances in which the applicability of state requirements might be at issue. The Department has been a party to 375 civil and 75 criminal cases from 1990 to 1999, or an average of 45 cases per year. The proportion of these lawsuits that involved a dispute over state jurisdiction based on plans' or arrangements' legal status is unknown. On the whole, 45 is considered a reasonable estimate of an upper bound number of plans which could have been a party to a lawsuit involving a determination of the plan's legal status. Because this procedural regulation and the related substantive regulation are expected to reduce the number of disputes, the Department assumes that

45 represents a conservatively high estimate of the number of plans or arrangements which would petition for an administrative hearing. Of all small plans, then, the greatest number of plans likely to petition for an administrative hearing represents a very tiny fraction of the total number of small plans. In addition, the Department has assumed that an entity's exercise of the opportunity to petition for a finding will generally be less costly than available alternatives. Accordingly, the Department has concluded that this regulation will not have a significant economic impact on a substantial number of small entities, but requests comments on the comparative costs of establishing a small entity's legal status in a court of law or at ALJ hearing.

(e) *Duplication.* No federal rules have been identified that duplicate, overlap, or conflict with the proposed rule.

(f) *Alternatives.* The proposed regulation represents the consensus report of a committee established in 1998 by the Secretary to provide an alternative to guidance proposed by the Department in 1995. Recognizing that guidance was needed in clarifying collective bargaining exceptions to the MEWA regulation, the Secretary had, in 1995, published a Notice of Proposed Rulemaking on Plans Established or Maintained Pursuant to Collective Bargaining Agreements in the **Federal Register** (60 FR 39209). At that time, the Department also proposed, as part of the NPRM, that it would be within the authority of state insurance regulators to identify and regulate MEWAs operating in their jurisdictions. In other words, the proposed approach did not establish a method for obtaining individual findings by the Department.

The Department received numerous comments on the NPRM. Commenters expressed concerns about their ability to comply with the standards set forth in the NPRM and to establish compliance with the criteria proposed by the Department. Commenters also objected to the part of the proposal which would have had state regulators determine whether a particular agreement was a collective bargaining agreement. Commenters strongly preferred that determination of whether a plan was established under or pursuant to a collective bargaining agreement lie with a federal agency and not with individual states.

Based on the comments received, the Department turned to negotiated rulemaking as an appropriate method of developing a revised Notice of Proposed Rulemaking. In September 1998, the Secretary established the ERISA Section 3(40) Negotiated Rulemaking Advisory Committee under the Negotiated Rulemaking Act. (5 U.S.C. 561 *et seq.*) (NRA). The Committee membership was chosen from the organizations that submitted comments on the Department's August 1995 NPRM and from the petitions and nominations for membership received in response to the Notice of Intent. The membership included representatives from labor unions, multiemployer plans, state governments, employer/management associations, Railway Labor Act plans, third-party administrators, independent agents and brokers of insurance products, insurance carriers, and the federal government. This regulation represents the Committee's consensus, in the form of a proposed rule, for determining the legal status of a welfare benefit plan. Based on the fact that this Notice of Proposed Rulemaking is the result of a Committee decision by consensus, and the fact that the Committee represents a cross section of the state, federal, association, and private sector insurance universe, the Department believes that, as an alternative to the 1995 NPRM, this regulation will accomplish the stated objectives of the Secretary and will have a beneficial impact on MEWAs and on state insurance commissions. No other significant alternatives which would minimize the economic impact on small entities have been identified.

Participating in an administrative hearing to determine legal status is a voluntary undertaking on the part of a MEWA. It would be inappropriate to create an exemption for small MEWAs under the proposed regulation because small MEWAs are as in need of clarification of their legal status as are larger MEWAs.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, PWBA is soliciting comments concerning the proposed information collection request (ICR) included in this Proposed Rule Governing Procedures for Administrative Hearings Regarding Plans Established or Maintained Pursuant to Collective Bargaining Agreements under Section 3(40)(A) of ERISA. A copy of the ICR may be obtained by contacting the individual identified below in this notice.

The Department has submitted a copy of the proposed information collection to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the 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 appropriated automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Pension and Welfare Benefits Administration. Although comments may be submitted through December 26, 2000. OMB requests that comments be received within 30 days of publication of the Notice of Proposed Rulemaking to ensure their consideration.

Address requests for copies of the ICR to Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone (202) 219–4782; Fax: (202) 219–4745. These are not toll-free numbers.

This proposed regulation establishes procedures for hearings before an Administrative Law Judge (ALJ) with respect to determinations under Section 3(40) of the Employee Retirement Income Security Act of 1974 (ERISA). Section 3(40) excepts from the definition of a multiple employer welfare arrangement any plan or

arrangement established or maintained under or pursuant to one or more agreements which the Secretary of Labor (the Secretary) finds to be a collective bargaining agreement. This proposed regulation sets forth administrative procedures pursuant to which an entity may, under limited circumstances, seek an individual determination from the Secretary as to whether it is a plan established or maintained under or pursuant to one or more collective bargaining agreements.

As stated in the Regulatory Flexibility Act analysis, the Department estimates that 45 entities would be the maximum number of petitioners for an ALJ hearing. Those entities seeking a finding under section 3(40) must file a written petition by delivering or mailing to the ALJ a petition which shall: (1) Provide the name and address of the entity for which the petition is filed; (2) provide the names and addresses of the plan administrator and plan sponsor(s) of the plan or other arrangement for which the finding is sought; (3) identify the state or states whose law or jurisdiction the petitioner claims has been asserted over the plan or other arrangement at issue, and provide the addresses and names of responsible officials; (4) include affidavits or other written evidence showing that—(i) state jurisdiction has been asserted over or legal process commenced against the plan or other arrangement pursuant to state law; (ii) the plan is an employee welfare benefit plan as defined at section 3 (1) of ERISA and is covered by ERISA pursuant to section 4 of the Act; (iii) the plan is established or maintained for the purpose of offering or providing benefits described in section 3(1) of ERISA to employees of two or more employers (including one or more self-employed individuals) or their beneficiaries; (iv) the plan satisfies the criteria in 29 CFR 2510.3–40(b); and (v) service has been made as provide in subsection 2570.95; (5) The affidavits shall set forth such facts as would be admissible in evidence in a proceeding under part 18 of Title 1 and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The affidavit or other written evidence must set forth specific facts showing the factors required under subparagraph (b)(4).

The Department believes that preparing and filing the petition will require 32 hours of an attorney's time, at $72 per hour, and that entities will purchase services to complete the petition rather than do this work themselves. Most of the factual information will be readily available in the office of any business or plan and will not require a great deal of time to assemble, either because they are maintained in the ordinary course of business, or they have been assembled at least in part in response to the assertion of jurisdiction by the state. The majority of the time is expected to be associated with drafting documents describing the facts related to whether a plan is established or maintained under or pursuant to a collective bargaining agreement. The total estimated cost for an attorney's time is $2,300 per petition filed. Additional costs are estimated at $10.00 per petition for materials and mailing costs. Additional actions following the establishment of a proceeding by the ALJ are excepted from PRA under the provisions of 5 CFR1320.4(a)(2).

Type of Review: New.

Agency: Pension and Welfare Benefits Administration.

Title: Petition for Finding under Section 3(40) of ERISA.

OMB Number: 1210–NEW.

Affected Public: Business or other for-profit; not-for-profit institutions; state government.

Respondents: 45.

Responses: 45.

Average Time per Response: 32 hours.

Estimated Total Burden Hours: 1.

Estimated Total Burden Cost (Operating and Maintenance): $104,100.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Small Business Regulatory Enforcement Fairness Act

The rule being issued here is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and, if finalized, will be transmitted to Congress and the Comptroller General for review. The rule is not a ''major rule'' as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this proposed rule does not include any federal mandate that may result in expenditures by state, local, or tribal governments, or the private sector, which may impose an annual burden of $100 million.

Executive Order 13132

When an agency promulgates a regulation that has federalism implications, Executive Order 13132 (64 FR 43255, August 10, 1999) requires that the Agency provide a federalism summary impact statement. Pursuant to section 6(c) of the Order, such a statement must include a description of the extent of the agency's consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of the State have been met.

This proposed regulation has Federalism implications because it sets forth standards and procedures for an ALJ hearing for determining whether certain entities may be regulated under certain state laws or whether such state laws are preempted with respect to such entities. The state laws at issue are those that regulate the business of insurance. A representative from the National Association of Insurance Commissioners (NAIC), which represents the interest of state governments in the regulation of insurance, participated in this rulemaking from the inception of the Negotiated Rulemaking Committee.

In the course of this rulemaking, the NAIC raised a concern that the proposed process by which the Department issues ALJ determinations regarding the collectively bargained status of entities, move forward as quickly as possible and not result in a stay of state enforcement proceedings against MEWAs. The regulation specifically states that the proceedings shall be conducted as expeditiously as possible, the parties shall make every effort to avoid delay at each stage of the proceeding, and the companion regulation that establishes criteria provides that proceedings under this regulation are not intended to change existing law regarding stay and abstention.

Statutory Authority

These regulations are proposed pursuant to section 3(40) of ERISA (Pub. L. 97–473, 96 Stat. 2611, 2612, 29 U.S.C. 1002(40)) and section 505 (Pub. L. 93–406, 88 Stat. 892, 894, 29 U.S.C. 1135) of ERISA and under Secretary of Labor's Order No. 1–87, 52 FR 13139, April 21, 1987.

List of Subjects in 29 CFR Part 2570

Administrative practice and procedure, Collective Bargaining, Employee benefit plans, Government employees, Penalties, Pensions, Reporting and recordkeeping requirements, Retirement.

Proposed Regulations

For the reasons set out in the preamble, the Department proposes to amend Part 2570 of Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

PART 2570—[AMENDED]

1. The authority for Part 2570 is revised to read as follows:

Authority: 5 U.S.C. 8477(c)(3); Section 3(40), 502(c)(2), 502(c)(5), 502(i), 505 and 734 of ERISA, 29 U.S.C. 1002(40) 1132(c)(2), 1132(c)(5), 1132(i), 1135, 1191(c); Reorganization Plan No. 4 of 1978; 5 U.S.C. 8477(c)(3); Secretary of Labor Order No. 1–87, 52 FR 13139 (April 21, 1987).

Subpart A is also issued under 29 U.S.C. 1132(c)(1).

Subpart G is also issued under sec. 4, Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by sec. 31001(s)(1), Publ. L. 104–134, 110 Stat. 1321–373.

2. Subpart G is added in Part 2570 to read as follows:

Subpart G—Procedures for Issuance of Findings Under ERISA § 3(40)

Sec.
2570.130 Scope of rules.
2570.131 In general.
2570.132 Definitions.
2570.133 Parties.
2570.134 Filing and contents of petition.
2570.135 Service.
2570.136 Expedited proceedings.
2570.137 Allocation of burden of proof.
2570.138 Decision of the Administrative Law Judge.
2570.139 Review by the Secretary.

§ 2570.130 Scope of rules.

The rules of practice set forth in this Subpart G apply to ''Section 3(40) Finding Proceedings'' (as defined in § 2570.132(g)), under section 3(40) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act). Refer to 29 CFR 2510.3–40 for the definition of relevant terms of section 3(40) of ERISA, 29 U.S.C. 1002(40). To the extent that the regulations in this subpart differ from the regulations in subpart A of part 18 of this title, the regulations in this subpart apply to matters arising under section 3(40) of ERISA rather than the rules of procedure for administrative hearings published by the Department's Office of Administrative Law Judges in subpart A of part 18 of this title. These proceedings shall be conducted as expeditiously as possible, and the parties shall make every effort to avoid delay at each stage of the proceedings.

§ 2570.131 In general.

If there is an attempt to assert state jurisdiction or the application of state law, either by the issuance of a state administrative or court subpoena to, or the initiation of administrative or judicial proceedings against, a plan or other arrangement that alleges it is covered title I of ERISA, 29 U.S.C. 1003, the plan or other arrangement may petition the Secretary to make a finding under section 3(40) of ERISA that the plan is established or maintained under or pursuant to an agreement or agreements that the Secretary finds to be collective bargaining agreements for purposes of section 3(40) of ERISA.

§ 2570.132 Definitions.

For section 3(40) Finding Proceedings, this section shall apply instead of the definitions in 29 CFR 18.2.

(a) *ERISA* means the Employee Retirement Income Security Act of 1974, *et seq.*, 29 U.S.C. 1001, *et seq.*, as amended.

(b) *Order* means the whole or part of a final procedural or substantive disposition by the administrative law judge of a matter under section 3(40) of ERISA. No order will be appealable to the Secretary except as provided in this subpart.

(c) *Petition* means a written request under the procedures in this subpart for a finding by the Secretary under section 3(40) of ERISA that a plan or arrangement is established or maintained under or pursuant to one or more collective bargaining agreements.

(d) *Petitioner* means the plan or arrangement filing a petition.

(e) *Respondent* means:

(1) A state government instrumentality charged with enforcing the law which is alleged to apply or which has been identified as asserting jurisdiction over a plan or other arrangement, including any agency, commission, board, or committee charged with investigating and enforcing state insurance laws, including parties joined under § 2570.136;

(2) The person or entity asserting that state law or state jurisdiction applies to the petitioner;

(3) The Secretary of Labor; and

(4) A state not named in the petition who has intervened under § 2570.133(b).

(f) *Secretary* means the Secretary of Labor, and includes, pursuant to any delegation or sub-delegation of authority, the Assistant Secretary for Pension and Welfare Benefits or other employee of the Pension and Welfare Benefits Administration.

(g) *Section 3(40) Finding Proceeding* means a proceeding before the Office of Administrative Law Judges relating to whether the Secretary finds a plan to be established or maintained under or pursuant to one or more collective bargaining agreements within the meaning of section 3(40) of ERISA.

§ 2570.133 Parties.

For section 3(40) Finding Proceedings, this section shall apply instead of 29 CFR 18.10.

(a) The term ''party'' with respect to a Section 3(40) Finding Proceeding means the petitioner and the respondents.

(b) States not named in the petition may participate as parties in a Section 3(40) Finding Proceeding by notifying the OALJ and the other parties in writing prior to the date for filing a response to the petition. After the date for service of responses to the petition, a state not named in the petition may intervene as a party only with the consent of all parties or as otherwise ordered by the ALJ.

(c) The Secretary of Labor shall be named as a ''respondent'' to all actions.

(d) The failure of any party to comply with any order of the ALJ may, at the discretion of the ALJ, result in the denial of the opportunity to present evidence in the proceeding.

§ 2570.134 Filing and contents of petition.

(a) A person seeking a finding under section 3(40) of ERISA must file a written petition by delivering or mailing it to the Chief Docket Clerk, Office of Administrative Law Judges (OALJ), 800 K Street, NW, Suite 400, Washington, DC 20001–8002.

(b) The petition shall—

(1) Provide the name and address of the entity for which the petition is filed;

(2) Provide the names and addresses of the plan administrator and plan sponsor(s) of the plan or other arrangement for which the finding is sought;

(3) Identify the state or states whose law or jurisdiction the petitioner claims has been asserted over the plan or other arrangement at issue, and provide the addresses and names of responsible officials;

(4) Include affidavits or other written evidence showing that—

(i) State jurisdiction has been asserted over or legal process commenced against the plan or other arrangement pursuant to state law;

(ii) The plan is an employee welfare benefit plan as defined at section 3(1) of ERISA (29 U.S.C. 1002(1)) and 29 CFR 2510.3–1 and is covered by title I of ERISA (*see* 29 U.S.C. 1003);

(iii) The plan is established or maintained for the purpose of offering or providing benefits described in section 3(1) of ERISA (29 U.S.C. 1002(1)) to employees of two or more employers (including one or more self-employed individuals) or their beneficiaries;

(iv) The plan satisfies the criteria in 29 CFR 2510.3–40(b); and

(v) Service has been made as provided in § 2570.135.

(5) The affidavits shall set forth such facts as would be admissible in evidence in a proceeding under part 18 of this title and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The affidavit or other written evidence must set forth specific facts showing the factors required under paragraph (b)(4) of this section.

§ 2570.13 Service.

For section 3(40) proceedings, this section shall apply instead of 29 CFR 18.3. (a) *In general.* Copies of all documents shall be served on all parties of record. All documents should clearly designate the docket number, if any, and short title of all matters. All documents to be filed shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges (OALJ), 800 K Street, N.W., Suite 400, Washington, DC 20001–8002, or to the OALJ Regional Office to which the proceeding may have been transferred for hearing. Each document filed shall be clear and legible.

(b) *By parties.* All motions, petitions, pleadings, briefs, or other documents shall be filed with the Office of Administrative Law Judges with a copy, including any attachments, to all other parties of record. When a party is represented by an attorney, service shall be made upon the attorney. Service of any document upon any party may be made by personal delivery or by mailing by first class, prepaid U.S. mail, a copy to the last known address. The Secretary shall be served by delivery to the Associate Solicitor, Plan Benefits Security Division, ERISA Section 3(40) Proceeding, P.O. Box 1914, Washington, DC 20013. The person serving the document shall certify to the manner and date of service.

(c) *By the Office of Administrative Law Judges.* Service of orders, decisions and all other documents shall be made to all parties of record by regular mail to their last known address.

(d) *Form of pleadings*—(1) Every pleading shall contain information indicating the name of the Pension and Welfare Benefits Administration (PWBA) as the agency under which the proceeding is instituted, the title of the proceeding, the docket number (if any) assigned by the Office of Administrative Law Judges and a designation of the type of pleading or paper (*e.g.,* notice, motion to dismiss, etc.). The pleading or paper shall be signed and shall contain the address and telephone number of the party or person representing the party. Although there are no formal specifications for documents, they should be typewritten when possible on standard size 8 ½ x 11 inch paper.

(2) Illegible documents, whether handwritten, typewritten, photocopies, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process provided all copies are clear and legible.

§ 2570.136 Expedited proceedings

For Section 3(40) Finding Proceedings, this section shall apply instead of 29 CFR 18.42.

(a) At any time after commencement of a proceeding, any party may move to advance the scheduling of a proceeding, including the time for conducting discovery.

(b) Except when such proceedings are directed by the Chief Administrative Law Judge or the administrative law judge assigned, any party filing a motion under this section shall:

(1) Make the motion in writing;

(2) Describe the circumstances justifying advancement;

(3) Describe the irreparable harm that would result if the motion is not granted; and

(4) Incorporate in the motion affidavits to support any representations of fact.

(c) Service of a motion under this section shall be accomplished by personal delivery, or by facsimile, followed by first class, prepaid, U.S. mail. Service is complete upon personal delivery or mailing.

(d) Except when such proceedings are required, or unless otherwise directed by the Chief Administrative Law Judge or the administrative law judge assigned, all parties to the proceeding in which the motion is filed shall have ten (10) days from the date of service of the motion to file an opposition in response to the motion.

(e) Following the timely receipt by the administrative law judge of statements in response to the motion, the administrative law judge may advance pleading schedules, discovery schedules, prehearing conferences, and the hearing, as deemed appropriate; provided, however, that a hearing on the merits shall not be scheduled with less than five (5) working days notice to the parties, unless all parties consent to an earlier hearing.

(f) When an expedited hearing is held, the decision of the administrative law judge shall be issued within twenty (20) days after receipt of the transcript of any oral hearing or within twenty (20) days after the filing of all documentary evidence if no oral hearing is conducted.

§ 2570.137 Allocation of burden of proof.

For purposes of a final decision under § 2570.138 (Decision of the Administrative Law Judge) or § 2570.139 (Review by the Secretary), the petitioner shall have the burden of proof as to whether it meets 29 CFR 2510.3–40.

§ 2570.138 Decision of the Administrative Law Judge.

For section 3(40) finding proceedings, this section shall apply instead of 29 CFR 18.57.

(a) *Proposed findings of fact, conclusions of law, and order.* Within twenty (20) days of filing the transcript of the testimony, or such additional time as the administrative law judge may allow, each party may file with the administrative law judge, subject to the judge's discretion under 29 CFR 18.55, proposed findings of fact, conclusions of law, and order together with the supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision based on oral argument in lieu of briefs.* In any case in which the administrative law judge believes that written briefs or proposed findings of fact and conclusions of law may not be necessary, the administrative law judge shall notify the parties at the opening of the hearing or as soon thereafter as is practicable that he or she may wish to hear oral argument in lieu of briefs. The administrative law judge shall issue his or her decision at the close of oral argument, or within 30 days thereafter.

(c) *Decision of the administrative law judge.* Within 30 days, or as soon as possible thereafter, after the time allowed for the filing of the proposed findings of fact, conclusions of law, and order, or within thirty (30) days after receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the administrative law judge shall make his

or her decision. The decision of the administrative law judge shall include findings of fact and conclusions of law, with reasons therefor, upon each material issue of fact or law presented on the record. The decision of the administrative law judge shall be based upon the whole record. It shall be supported by reliable and probative evidence. Such decision shall be in accordance with the regulations found at 29 CFR 2510.3–40 and shall be limited to whether the petitioner, based on the facts presented at the time of the proceeding, is a plan established or maintained under or pursuant to collective bargaining for the purposes of section 3(40) of ERISA.

§ 2570.139 Review by the Secretary.

(a) A request for review by the Secretary of an appealable decision of the administrative law judge may be made by any party. Such a request must be filed within 20 days of the issuance of the final decision or the final decision of the administrative law judge will become the final agency order for purposes of 5 U.S.C. 701 *et seq.*

(b) A request for review by the Secretary shall state with specificity the issue(s) in the administrative law judge's final decision upon which review is sought. The request shall be served on all parties to the proceeding.

(c) The review by the Secretary shall not be a *de novo* proceeding but rather a review of the record established by the administrative law judge.

(d) The Secretary may, in his or her discretion, allow the submission of supplemental briefs by the parties to the proceeding.

(e) The Secretary shall issue a decision as promptly as possible, affirming, modifying, or setting aside, in whole or in part, the decision under review, and shall set forth a brief statement of reasons therefor. Such decision by the Secretary shall be the final agency action within the meaning of 5 U.S.C. 704.

Signed this 16th day of October 2000.

Leslie B. Kramerich,

Acting Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 00–27045 Filed 10–26–00; 8:45 am]

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Federal Register

Friday,
October 27, 2000

Part III

National Credit Union Administration

12 CFR Part 701

Organization and Operations of Federal Credit Unions; Final Rule

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The NCUA Board is amending its chartering and field of membership manual to update chartering policies and further streamline the select group application process. These amendments result from NCUA's experience addressing field of membership issues and concerns that surfaced after the adoption of the current chartering and field of membership policies.

EFFECTIVE DATE: November 27, 2000.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: J. Leonard Skiles, Chairman, Field of Membership Task Force, 4807 Spicewood Springs Road, Suite 5200, Austin, Texas 78759 or telephone (512) 231–7900; Michael J. McKenna, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518–6540; Lynn K. McLaughlin, Program Officer, Office of Examination and Insurance, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518–6360.

SUPPLEMENTARY INFORMATION: In 1998, Congress revised the laws on field of membership with the passage of the Credit Union Membership Access Act (''CUMAA''). On August 31, 1998, the NCUA Board issued a proposed rule updating NCUA's chartering and field of membership policies. 62 FR 49164 (September 14, 1998). On December 17, 1998, the NCUA Board issued a final rule with an effective date of January 1, 1999. When the NCUA Board issued its final rule it instructed the Field of Membership Taskforce to coordinate and monitor implementation of the new chartering policies and make necessary recommendations for policy clarifications and amendments to IRPS 99–1.

Over the past twenty-two months, NCUA's Field of Membership Taskforce has monitored and reviewed the implementation of IRPS 99–1 in an effort to improve consistency and provide a basis, if necessary, for further clarifications and modifications. As a result of this continued oversight, the Field of Membership Taskforce made a number of recommendations to clarify and update field of membership policies and address the issues that arose during the oversight period.

On June 6, 2000, the NCUA Board issued proposed amendments to its chartering and field of membership policies with a sixty-day comment period. 65 FR 37065 (June 13, 2000). The comment period ended on August 14, 2000.

Four hundred and forty-nine comments were received. Comments were received from two hundred and eighty-seven federal credit unions, one hundred and seventeen state chartered credit unions, one United States Senator, four United States Congressmen, twenty-one state leagues, six national credit union trade associations, two bank trade associations, two state representatives, one shared service cooperative, one technical support specialist, and seven credit union members.

Generally, with the exception of the proposed addition of a community action plan requirement (CAP) for community chartered credit unions, most commenters were supportive of the proposed revisions to NCUA's chartering policies. As a result of those comments, a number of modifications to the proposed rule have been incorporated into the final rule. An overwhelming majority of the commenters concentrated on the CAP provision and recommended that it be deleted. The final rule, while not deleting the CAP concept, has been modified from the proposed rule.

A. Final Amendments

1. Occupational Common Bond

The NCUA Board proposed to amend the language in the section on occupational common bonds so that in situations where multiple contractors who qualify based on a strong dependency relationship are sole proprietors (for example, there may be hundreds of independent drivers for a particular taxi company), the regional director may use generalized wording in the credit union's charter. Seven commenters agreed with this proposed change. One commenter opposed the change. One commenter stated the more generalized language should be used in all cases of sole proprietors. The NCUA Board believes that the regions will, in most cases, use the generalized wording for most sole proprietors, but there may be cases when the generalized wording would not be appropriate. Therefore, the final rule incorporates the amendment as proposed.

2. Associational Common Bond

Students Groups. The NCUA Board believes that students are a unique group that can be considered either occupational or associational depending on the circumstances. A student group, by itself or when combined with school employees, can be or constitute part of an occupational common bond. Similarly, when part of a faith-based group, the student group can be treated as part of an associational common bond. Therefore the NCUA Board proposed to amend Chapter 2, Section III. A.1. of IRPS 99–1 to reflect this view. Nine commenters agreed with this change. One commenter believes this proposal is too expansive. For the reasons stated in the proposed rule, the NCUA Board is adopting the amendment as proposed.

Two commenters stated that alumni of a school should not have to join the alumni association before being eligible for credit union service. The Board does not agree. Eligibility for credit union membership based on an alumni associational common bond requires that an alumnus be a member of the association. Additionally, the alumni association must meet the requirements of an association. Those requirements include consideration of the payment of dues, voting rights, sponsored activities, etc. These commenters also stated that, in some cases, alumni of a college or a university were automatically members of their alumni association and, in some cases, alumni associations do not charge dues to belong to the alumni association. To clarify current policy, if an alumnus is automatically a member of the alumni association as a result of graduation, and there are no other membership requirements, then the membership requirement is satisfied provided the other indicia of membership in an association are met. Graduates of a college or university would not be a legitimate associational common bond.

One commenter stated that Chapter 2, Section IV.A.1 should be amended to demonstrate that a multiple common bond credit union can add students as either an associational group or occupational group. The Board believes that since this is addressed in both the occupational and associational sections, this revision is not necessary.

3. Multiple Common Bond Credit Unions

Expedited Process for Groups of 500 or Less. In the chartering process, as well as the addition of select groups to a multiple common bond credit union, economic advisability is critically

important. It is the responsibility of NCUA to ensure that if a credit union is chartered, it has, at a minimum, a reasonable opportunity to succeed in today's financial marketplace.

In addressing these responsibilities in relation to the historical data related to chartering new credit unions, the NCUA Board established an expedited process in IRPS 99–1 for groups of 200 or less primary potential members. Although a written determination regarding the various statutory criteria was still required, the expedited process allowed for the streamlined processing of groups of 200 or less since the Board found that such groups, in almost all cases, would not be economically viable. Thus, in the past 21 months, applicant credit unions applying to add a group of 200 or less simply had to complete the Form 4015–EZ. Additionally, no overlap analysis was required for these small groups.

Based on the historical experience since the promulgation of IRPS 99–1, plus other chartering data since 1990, the NCUA Board proposed to raise the expedited processing number for adding groups to 500. In conjunction with this proposal, the NCUA Board also proposed raising the number of members in a group requiring an overlap analysis from 200 to 500.

Two commenters opposed increasing the expedited processing number to 500. Fourteen commenters agreed with the proposed amendment that the expedited processing number for adding select groups should be increased to 500, and that no overlap analysis should be required of groups of 500 or less. Eleven commenters recommended raising the expedited processing number above 500. Of those eleven commenters, one commenter suggested increasing the threshold to 1,000, one to 1,500, two to 2,000, and seven commenters suggested raising the number to 3,000.

The NCUA Board believes that historical experience and other data support raising the number to 500. The Board will consider a further increase to the expedited processing number when more historical data is accumulated. If subsequent evidence demonstrates a higher number is justified, the Board will revisit the issue. The Board is also restating its position that desire and initiative to form a credit union are critical factors in evaluating economic advisability.

One commenter asked if a credit union could appeal an overlap when a group in its field of membership is added to another credit union. A credit union can appeal any decision by the regional director, but an overlapped credit union is not provided written notification and appeal rights.

Adequate Capitalization for Multiple Common Bond Credit Union Expansions. One of the statutory requirements for the addition of a select group to a multiple common bond credit union is that the credit union be adequately capitalized. However, the statute did not define adequate capitalization. Consequently, the Board stated in IRPS 99–1 that six percent capitalization for a credit union in existence more than 10 years should be considered adequate for field of membership expansion purposes. Since the adoption of that standard, the NCUA Board has come to believe that for reasons totally outside the control of the credit union, such as sponsor problems, temporary asset fluctuations or economic downturns, a credit union may temporarily drop below or not be able to achieve or sustain a six percent capitalization level. Therefore, the NCUA Board proposed giving the regional director latitude to determine that any credit union with less than six percent net worth is adequately capitalized for field of membership purposes if the credit union is making reasonable progress toward meeting the requirement.

Twelve commenters agreed with providing the regional director with this discretionary authority, although one of these commenters would reduce the number to five percent. One commenter believes that the regional director should not have discretionary authority and that a minimum level of capital should be maintained. Two commenters suggested that all expanding credit unions should maintain a six percent capitalization level. One commenter opposed this policy change. The NCUA Board is adopting the proposed amendment in the final rule. The NCUA Board was provided no compelling rationale for lowering the standard for adequately capitalized or for not providing the regional director with this discretionary authority.

Reasonable Proximity for Select Group Expansions. Since the adoption of IRPS 99–1, an issue has been raised regarding the policies affecting the addition of groups that are within reasonable proximity of a service facility (this term includes a service center, branch or shared branch or any offsite credit union location that meets the definition of a service facility.) In defining reasonable proximity, the NCUA Board stated in IRPS 99–1 that the group to be added must be within the ''service area'' of a ''service facility'' of the credit union. Service facility was defined to mean a place where shares are accepted for members' accounts, loan applications are accepted, and loans are disbursed. This definition included a credit union owned branch, a shared branch, a mobile branch, an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. This definition did not include an ATM. Most importantly, the Board articulated the position that in order to expand around a service facility, the credit union must have ownership in the service facility, but the degree of ownership was not defined. Participation in a service facility, without ownership, was not an allowable basis for adding a select group and otherwise satisfy the requirement of the statute that the credit union must be within reasonable proximity to the location of the group.

In reviewing this issue, the Board determined that the current policy was overly restrictive and that the threshold for allowing the addition of groups around a service facility should be modified. The proposed amendment would provide greater flexibility to credit unions to add select groups around service facilities if either (1) the credit union owns directly or through a CUSO or similar organization, at least a 5 percent interest in the service facility or (2) the service facility is local to the credit union and the credit union is an authorized participant in the service center.

A total of twenty-six commenters addressed this issue, most of whom recommended greater flexibility than that proposed. Five commenters approved of the expansion requirements for shared branches. Two commenters stated that any ownership interest should be sufficient. One commenter stated that a five percent ownership interest is too high. Three commenters stated that NCUA should not allow expansions around shared service centers.

Nine commenters stated that shared branches should be treated like any other credit union branch for expansion purposes, without any requirement of ownership interest or that it be local. Two commenters suggested that instead of a specific ownership amount, the agency should define ownership as that which conveys or allows a voting right in the partnership, corporation or organization, regardless of its size relative to other owners. These commenters stated that a voting right demonstrates the ability of the credit union to participate in the direction of the partnership, corporation or organization and should resolve NCUA's concern as to ownership and its relationship to FOM expansions. Many

of the commenters who opposed the ownership interest requirement believed that the proposal would hurt small credit unions.

Three commenters stated that NCUA should give a regional director discretionary authority concerning the five percent limitation, with one of these commenters providing the following test for an expansion: (1) The circumstances are such that less than a five percent ownership level is achieved because the number of owners makes it difficult or impossible to own more than five percent; or (2) the applicant credit union is serving at least one group of greater than 500 potential members within a reasonable proximity of the shared facility. One commenter believed NCUA should consider items other than ownership including the availability of other credit union services, the location of other select groups presently in the credit union's field of membership, the presence of branch offices or other locations of existing select groups, and the usage statistics of shared branches by current members of the requesting credit union.

The Board notes that the Federal Credit Union Act clearly states that if the formation of a separate credit union is not practicable or consistent with the standards set forth in the statute, then a select group can be included in the ''field of membership of a credit union that is within reasonable proximity to the location of the group.'' The statutory standard, therefore, is that if the group cannot form a credit union, then it can be added to the field of membership of another credit union if it is reasonably proximate to the expanding credit union. In addressing this issue, therefore, it is necessary to determine what is meant by credit union and reasonable proximity.

The second of these two issues is easily addressed. NCUA has consistently held that the group being added must be within the expanding credit union's geographic service area. The House Committee Report for CUMAA addressed the reasonable proximity requirement and offered valuable guidance on how NCUA ultimately viewed the statutory language. H.R. Rep. No. 104–472, 105th Cong., 2nd Sess. 19 (1998). On page 20 of the Report it is stated that the statute ''articulates a strong policy towards placing groups which cannot form their own credit unions with a *local* credit union.'' (Emphasis added.)

The definition of a credit union, therefore, is crucial to determining how flexible NCUA can be in allowing expansions around service facilities. Can it be reasonably determined that a service facility constitutes a credit union in the context of the statute, if the expanding credit union has little or no ownership interest in the service facility? In other words, can a credit union that is simply linked to the service facility through a state or national network use that linkage, without ownership, to expand its field of membership by adding groups within the service area of the service facility?

Prior to CUMAA, NCUA's policy did not permit the addition of select groups around shared branches. Additionally, a branch could not be established without an existing membership base. With the passage of CUMAA and the adoption of IRPS 99–1, the only change in this policy was that a credit union could establish a branch office in any location regardless of membership location. This policy allowed greater expansion opportunities, but it required a capital commitment.

The proposed amendment would allow greater flexibility for credit unions to add new groups, but it would not permit credit unions that are simply linked to a service facility through a state or national network use that linkage, without ownership, to expand by adding select groups located within the service area of those service facilities? It is the Board's view that a service facility is not a credit union for the purposes of field of membership expansion unless the credit union has an ownership interest in that service facility, or the service facility is otherwise local to the credit union and already serves an existing membership base.

The question then becomes, what degree of ownership interest is appropriate? A number of commenters suggested various levels of ownership interest or alternatives to ownership, such as voting rights; however, the Board continues to believe that a 5 percent level of ownership interest is reasonable and satisfies the intent of the statute. It is important to note that this interpretation does not limit service to members through a service facility not owned by a credit union. It simply prescribes certain ownership requirements that must be met before a credit union can expand around a service facility.

The amendment, as proposed, is adopted in the final rule.

Multiple Common Bond Documentation Requirements. Since the implementation of IRPS 99–1, a number of questions and issues have been raised related to the documentation requirements that must be satisfied before adding select groups. To clarify this issue, the NCUA Board proposed adding language to Chapter II, IV.B.3 as follows:

Why the formation of a separate credit union for the group is not practical or consistent with safety and soundness standards. Some of the areas the credit union may consider include:

- Member location—whether the membership is widely dispersed or concentrated in a central location.
- Demographics—the employee turnover rate, economic status of the group's members, and whether the group is more apt to consist of savers and/or borrowers.
- Market competition—the availability of other financial services.
- Desired services and products—the type of services the group desires in comparison to the type of services a new credit union could offer.
- Sponsor subsidies—the availability of operating subsidies.
- Employee interest—the extent of the employees' interest in obtaining a credit union charter.
- Evidence of past failure—whether the group previously had its own credit union or previously filed for a credit union charter.
- Administrative capacity to provide services—will the group have the management expertise to provide the services requested.

Eight commenters approved of adding the clarifying language for why it may not be practical for a group to form its own credit union. Five commenters suggested that the desire of the sponsor should be added to the list. The NCUA Board agrees with this suggestion and has added the desire of the sponsor as a factor to be considered in determining why a group may not wish to form its own credit union.

One commenter stated that the ''availability of other financial services'' is not relevant and recommended deleting it from the list of factors to be considered. This commenter would also delete ''the availability of operating subsidies,'' and suggested consideration of operating subsidies may discourage potential sponsors. The NCUA Board disagrees with these comments and believes both factors could be important in determining economic viability.

Two commenters recommended that NCUA not contact the group when trying to determine economic advisability. Although direct contact with a group seeking credit union service is infrequent, occasionally it is necessary in order to obtain additional information in support of the request. Most often the direct contact is related to obtaining more documentation on economic advisability criteria or obtaining clarification on assertions

made by the group. Generally, directly contacting a group that has submitted incomplete information has expedited the field of membership expansion request. As a result, NCUA reserves the right to contact the group when additional information is needed to process an application.

Two commenters stated that the manual should specifically state, as the preamble did, that a ''credit union need not address every item on the list, simply those issues that are relevant to its particular request.'' The NCUA Board agrees with this suggestion since it will provide clarification and has incorporated it into the final rule.

Two commenters stated that the economic advisability list should state that widely dispersed groups do not meet the criteria for the formation of a separate credit union. The NCUA Board does not agree with these commenters. Although rare, widely dispersed members of groups may still have the ability to form their own credit union; however, it is recognized that membership dispersion is a critical consideration in determining economic advisability.

Voluntary Mergers. Consistent with current policy, two single common bond credit unions that share the same common bond (same field of membership) can voluntarily merge. For example, corporation A is nationally based. As a result of being nationally based, it has several credit unions that are not geographically restricted serving its employees. These single common bond credit unions share the same common bond and field of membership. Accordingly, by policy, no analysis of the groups are required to determine if they can stand on their own and the credit unions can voluntarily merge.

Similarly, if corporation A is served by a single common bond credit union and corporation B is served by a single common bond credit union, the two single common bond credit unions can merge if one corporation is acquired by the other. In other words, if corporation A purchases corporation B, then the two single common bond credit unions share the same common bond and there is no restriction on the two credit unions voluntarily merging. Again, no field of membership analysis is required, other than to determine they share the same common bond.

The two situations described above have not presented a problem this past year. However, in the examples provided above, if one of the credit unions is a healthy multiple common bond credit union, the result can be entirely different. In some cases, this places an undue burden on the credit unions and often presents potential long-term supervisory concerns. To illustrate, if in the second example the credit union serving corporation B is a multiple common bond credit union, and corporation A purchases corporation B, under current policy, if the primary field of membership in corporation B's credit union has more than 3,000 primary potential members and every other group has less than 3,000 primary potential members, then NCUA still must analyze each group of 3,000 or more potential members to determine whether the formation of a separate credit union is practical. This is a harsh result when both credit unions essentially share the same common bond.

The NCUA Board believes that if two credit unions have a substantial overlap of their fields of membership, then the two credit unions should be allowed to voluntarily merge without analyzing that group's ability to form its own credit union.

Therefore, the NCUA Board proposed a modification to its merger policy to permit the voluntary merger of credit unions with fields of membership that substantially overlap. That is, if two or more credit unions share the same primary fields of membership, and each of the remaining select groups have primary potential members less than 3,000, then the remaining groups will be considered incidental and the credit unions should be allowed to merge.

Eleven commenters approved of the change to the voluntary merger section. Two of these commenters suggested that NCUA consider expanding this interpretation to also allow voluntary mergers of credit unions sharing similar fields of membership without an intervening corporate event. The NCUA Board agrees, but believes that the proposed revision reflects this position; therefore, no additional change is necessary.

Two commenters opposed the change in policy. Three commenters stated that even this proposed voluntary merger policy is overly restrictive. One commenter stated that NCUA should approve voluntary mergers with little or no restrictions in the case of corporate acquisitions or restructuring. Six commenters, notwithstanding the law, stated that any voluntary merger should be permitted. For the reasons cited above, the NCUA Board is changing its voluntary merger policy. However, unrestricted voluntary mergers of multiple common bond credit unions cannot be permitted due to the statutory restrictions contained in CUMAA.

Supervisory Mergers. When safety and soundness concerns are present, NCUA may approve the merger of any federally insured credit union. The NCUA Board proposed to amend Chapter II, Section IV.D.2 of the Chartering Manual to clarify that abandonment by the management and/or officials and an inability to find replacements, loss of sponsor support, serious and persistent record keeping problems, sustained material decline in financial condition, or other serious or persistent circumstances are examples that may constitute grounds for merging a credit union due to supervisory concerns. These are just examples and not an all-inclusive list.

Seven commenters approved of this amendment to this section. Two commenters objected to the restriction that a financially healthy, single common bond credit union with potential members in excess of 3,000 may not merge with a multiple group credit union unless there are supervisory reasons. The NCUA Board is bound by the merger provision in CUMAA and is adopting the amendment as proposed.

Common Bond Charter Conversions. The NCUA Board proposed to permit a credit union to continue to serve any group included in or added to its single common bond field of membership at the time of conversion to a single common bond credit union for a period of three years from the date of conversion, even if the group is later sold, spun-off, or otherwise divested as a result of a corporate reorganization/restructuring. If the credit union elects to continue to serve any sold, spun-off or otherwise divested group, then the credit union must convert back to a multiple common bond credit union on the third anniversary of the date of conversion. During this three-year period, it will continue to be treated as a single common bond credit union.

Ten commenters approved of this policy change. Three commenters stated this policy change is still overly restrictive. One commenter opposed the policy change. One commenter suggested that NCUA allow single common bond credit unions to continue in a single common bond status, consistent with the new corporate restructuring policy, if the credit union is still serving only its single sponsor and groups spun-off by the single sponsor and/or groups related to the single sponsor. The Board does not agree that additional changes, beyond those proposed, are necessary.

One commenter stated that NCUA should apply this same three-year provision to a credit union that converts to a community charter and has groups outside the community boundaries.

That is, the credit union should be able to serve new members of these select groups for three years after the conversion. The NCUA Board believes that when a credit union converts to a community charter, it should serve the community and not select groups. The only exception is for groups obtained through an emergency merger or emergency purchase and assumption. The grandfather provision in CUMAA is not applicable since the credit union has changed its charter type. Therefore, the NCUA Board is not adopting this commenter's suggestion.

Conversions of Multiple Common Bond Credit Unions. The NCUA Board proposed a clarification that a state-chartered multiple common bond credit union that converts to a federal charter may retain in its field of membership any group that it was serving at the time of conversion. Any subsequent additions or amendments to the field of membership would have to comply with federal field of membership policies. Additionally, the NCUA Board clarified that if any state chartered credit union that was considered under state law to be a single common bond credit union, but under federal rules would be classified a multiple common bond credit union, converts to a federal charter, the charter type must be changed to reflect federal policy.

Six commenters approved of the amendment regarding state multiple group credit union conversions to federal multiple group charters. Two commenters stated that NCUA should make this policy more expansive. One commenter opposed this policy change.

The NCUA Board believes that the proposed change is proper and is adopting the proposed amendment.

The NCUA Board also proposed an amendment to Chapter IV, Section III.A of the Chartering Manual to clarify that a federal credit union converting to a state charter remains responsible for the operating fee for the year in which it converts. Four commenters opposed this clarification and requested that the fee be pro-rated. Currently, the operating fee is not pro-rated and the clarification does not change existing policy.

4. Corporate Restructuring for Occupational Common Bond Credit Unions and Multiple Common Bond Credit Unions

The most challenging and complex field of membership issues have involved the loss or dilution of a field of membership as a result of corporate reorganization or restructuring. Although IRPS 99–1 addressed this issue, the current policy does not completely set forth the resolution to various, and sometime numerous, consequences of a corporate restructuring/reorganization, particularly when the credit unions involved are reluctant and, in some cases, refuse to mutually address the problem. Therefore, the NCUA Board proposed amendments regarding corporate restructuring for both single bond credit unions and multiple common bond credit unions.

For single common bond credit unions, the NCUA Board proposed an amendment to clarify that if the group comprising the single common bond of a credit union merges with, or is acquired by, another group, the credit unions originally serving both groups can serve the new group resulting from the merger or acquisition after receiving a housekeeping amendment. In other words, it will be permissible for both credit unions to serve the same single common bond group. However, the credit unions may agree to divide the field of membership in some way. To clarify this practice, additional language was proposed to state that unless an agreement is reached limiting the overlap resulting from the corporate restructuring, NCUA will permit a complete overlap of the credit unions' fields of membership.

For multiple common bond credit unions, the NCUA Board proposed an amendment to clarify that when two groups merge, or one group is acquired by the other, and each is in the field of membership of a credit union, then both (or all affected) credit unions can serve the resulting merged or acquired group, subject to any existing geographic limitation and without regard to any overlap provisions by a housekeeping amendment to its charter. As with single common bond credit unions, both credit unions will be allowed to serve the new group resulting from the merger, buyout or acquisition, and the credit unions can mutually divide the new field of membership. If they do not agree to a division of the field of membership, then a total overlap will be permitted, subject to any existing geographic limitation. The NCUA Board believes this to be in the best interests of the credit unions and the members due to the safety and soundness concerns that evolve when a credit union loses its field of membership.

Seventeen commenters strongly approved of all of the amendments regarding corporate restructuring. Many of these commenters commended NCUA for how it proposed to address this complex issue. One commenter stated the changes to this section are not appropriate. This commenter states that the desire of the corporate sponsor should have a significant bearing on which credit union will serve the employees. Although the desires of the sponsor are important, from a safety and soundness perspective, as well as consumer choice, it would not be advisable to allow a sponsor to control the fate of a credit union. Therefore, the NCUA Board is adopting the proposed amendments on corporate restructuring in final as proposed. The corporate restructuring policy is applicable in any situation where two or more credit unions, regardless of their charter type, acquire a group as a result of a merger or corporate restructuring/acquisition.

One commenter requested that single common bond credit unions should not have to list their subsidiaries. The Board does not agree. New groups, whether added as a result of an expansion or a housekeeping amendment, should be included in the field of membership to allow NCUA to monitor overlaps. It is important to note, however, that a credit union may have language in its field of membership as follows: '' XYZ Corporation and its subsidiaries.'' If such language exists or is added to the field of membership of a single common bond credit union, then the credit union can legitimately serve any new subsidiary acquired by the sponsor through a housekeeping amendment provided the ownership requirements are met. In this instance, no overlap analysis would be required.

5. Community Charters

Although the NCUA Board did not propose any changes to its definition of a local community, one commenter suggested that any county or equivalent political jurisdiction, regardless of size, should be deemed a local community where residents interact or have common interests. Three commenters stated that they agree with NCUA that there is no negative presumption that arises with populations larger than 300,000 in chartering a community credit union. One commenter stated that NCUA should consider defining a local community as one or more metropolitan statistical areas, as defined by the Office of Management and Budget, or one or more contiguous political subdivisions, such as counties, cities or towns. One commenter believes NCUA's definition of a local community is overly broad. Although the NCUA Board is not making any changes to the definition of local community, it does wish to note that areas larger than 300,000, such as Reno, Nevada, and San Francisco, California, qualify as a local community. Although not every large city will qualify as a local community, many

cities and/or metropolitan areas may have the indicia of a local community.

Community Action Plan (CAP). The Board recommended amending IRPS 99–1 to require all community credit unions to develop a CAP. The intent of the CAP provision is to supplement a community credit union's marketing plan by specifically addressing how the credit union plans to market its services to the entire community, including any underserved or low-income areas, if applicable. The proposed amendment also included a provision to require the board of community credit unions to periodically review and update their CAP to determine if all segments of the community were being served. If a credit union failed to make reasonable efforts to follow its CAP, then NCUA could initiate appropriate supervisory actions to require compliance.

The rationale for CAP is relatively simple. Since service to the entire community is an essential consideration for community charters, then NCUA can and should set forth its expectation in this regard. Most importantly, a fundamental premise underlying the granting of any community charter is that the entire defined community area will be served. It has been, and continues to be, the intent of this Board that all segments of a community will be served, particularly members that reside in underserved areas. To this end, the CAP was proposed, notwithstanding the absence of tangible evidence regarding the manner in which credit unions attempt to meet this important goal.

While the overwhelming majority of the responses opposed the proposed CAP provision, it is noteworthy that only 99 of the commenters would be directly affected by the provision as it was proposed. Also, one comment letter received from a trade association in favor of the provision counts 110 community charters among its members. Six other commenters favored CAP and four hundred and twenty-three commenters opposed CAP, some in very strong terms. However, in raising those concerns, it was evident that most commenters would agree that community credit unions should serve the entire community. The method by which this should be accomplished was the focal point of disagreement since most commenters relayed their belief that community credit unions were, in fact, meeting the goal highlighted by the CAP provision.

Of those who approved of CAP, one recommended amending the proposal as follows: (a) Credit unions with less than $10 million in assets should be exempted; (b) NCUA should specify appropriate sanctions rather than reserving broad discretionary supervisory powers; and (c) NCUA should require that credit unions expanding into low-income communities submit regular service status reports. Another commenter recommended that CAP should extend to all federal credit unions.

The commenters who objected primarily made the following points: (1) They believe the proposal is similar to Community Reinvestment Act (CRA) requirements; (2) it is unnecessary since there is no evidence that community credit unions are not serving their entire field of membership adequately; (3) NCUA's legal authority to promulgate this requirement is doubtful; (4) meaningful comment is impossible because the guidance to examiners in reviewing the CAP is not part of the proposal (also examiners are not qualified to review such a plan); (5) implementation of CAP will encourage more conversions to state charters or thrifts and eventually destroy the dual chartering system; (6) community charters naturally serve their entire communities; (7) the CAP provision is not safety and soundness related; (8) CAP increases regulatory burden; and (9) CAP harms small credit unions by making them develop unnecessary paperwork. Some commenters were also concerned that NCUA will extend this proposal to all federal and state chartered credit unions. One commenter stated it would take close to 40 hours to prepare a CAP and not the two hours estimated by NCUA.

In opposing CAP, many commenters raised concerns tangential to the intent of CAP. In view of the objections raised, some observations relative to the CAP provision are appropriate.

CAP is not the same as the Community Reinvestment Act (CRA), nor was it intended to be ''like CRA.'' CRA and its implementing regulations (12 U.S.C. 2901 *et seq.* and 12 CFR 228) set forth lending tests, investment tests, service tests, standards and assessments to assess an institution's record of helping the needs of the local communities in which the institution is chartered, regardless of whether the people in some of these communities are customers or affiliated with the institution. Conversely, the CAP provision is intended to serve as a tool to ensure that a community credit union has a plan to serve all segments of the community it is chartered to serve.

Although there is only anecdotal evidence regarding community credit unions, as a group, serving their entire fields of membership, a CAP underscores the importance of this underlying principle for community charters. In fact, some federal credit union commenters sent in their business plans and marketing plans showing that they already had a plan in place to serve the entire community. Based on the comments of community credit unions and the submissions some of them provided, many community credit unions already have adopted plans and offer products and services designed to serve the entire community. Therefore, imposing this requirement on community credit unions should be minimally burdensome, if at all.

Many commenters suggested that their community credit unions are already serving the entire community and that their credit unions are accomplishing the intent of the CAP provision. To suggest, as some did, that addressing the issue of serving the entire community is unnecessary overlooks the fact that many credit unions already recognize the importance of this issue. Additionally, any new community credit union, or a credit union converting to a community charter, must have addressed this issue under IRPS 99–1. For example, in this year alone, over 75 credit unions have converted to community charters and another 20 community credit unions have expanded their community boundaries.

In recognition of the concerns raised by the commenters, the Board modified the proposed language requiring a separate CAP document. Rather, a community credit union must address in some form how it is going to serve the community it was granted, whether it is in their business or marketing plan, or other appropriate documentation. This revision to the proposed rule accommodates those community credit unions that already have found an appropriate method of setting forth how they intend to serve the entire community.

The Board does not agree with the proposition that the CAP provision cannot be legally imposed. The Board has broad general authority to prescribe rules and regulations for the administration of the Federal Credit Union Act. 12 U.S.C. 1766(a); 12 U.S.C. 1789(a)(11). The Supreme Court has recognized that regulations promulgated under such broad empowering provisions of a statute ''will be sustained so long as *** [the regulation] is reasonably related to the purposes of the enabling legislation.'' *Mourning* v. *Family Publications Service, Inc.,* 411 U.S. 356, 369 (1973) *quoting Thorpe* v. *Housing Authority of the City of Durham,* 393 U.S. 268, 280–81 (1969).

The Board also has specific regulatory authority in connection with its

chartering and supervision of community credit unions, 12 U.S.C. 1759(g), and general statutory responsibility, 12 U.S.C. 1781(c)(1)(D), to assure that the convenience and needs of the members to be served are being met by any credit union to which it provides federal share insurance. Consequently, the CAP provision is intended to underscore this responsibility.

Failure to adequately serve the entire membership is a safety and soundness issue for a community credit union. A community credit union is frequently more susceptible to competition from other local financial institutions, sometimes lacks the ability to adequately implement payroll deduction and does not have support from any single sponsoring company or association. The long-term success of a community credit union is based on its ability to serve its entire community. Financial health and steady growth stem from a community credit union having an adequate plan to serve its entire membership and its entire community. Consequently, the failure to adequately serve the entire membership and/or the lack of an adequate plan to serve the entire community may ultimately become a safety and soundness issue for a community credit union.

Generally, the remainder of the commenter's primary reasons for opposing CAP were based on philosophical positions or on speculation of what may or may not happen if CAP is implemented. Those concerns have been carefully considered. Briefly, the Board is not convinced, based on the evidence to date, that a plan devised by credit union management on how they intend to serve the entire community, the basis upon which the community charter was granted, will be harmful to small credit unions or decrease the value of a federal charter. In view of the modified approach, the issue of examiner guidance is moot since the examiner will review the document in the context of safety and soundness in the same manner they review a credit union's business plan or marketing plan.

It is the Board's view that the underlying goals for proposing a CAP should not be abandoned. In light of the comments received, however, a modified approach to accomplish the goal of ensuring service to all segments of a community, and with less regulatory burden, can still be accomplished.

The final rule requires that a community credit union address in either its marketing or business plan or other appropriate separate documentation, such as the strategic plan, project differentiation, *etc,* how it plans on serving the entire community, including how the credit union will market to the community and what products and services will be offered by the credit union to assist underserved members in the community. A separate document is not necessarily required. It will be the responsibility of credit union management to periodically review its business, marketing or other plans to evaluate all aspects of its annual and strategic goals, including service to all within the community. A credit union's use of its business or marketing plan is a factor that has been and will continue to be considered in the overall assessment of management. Included in this assessment will be the absence of any plan addressing how the credit union will serve the entire community. As stated in the preamble to the proposed rule, existing credit unions will have until December 31, 2001 to have a plan in place addressing how the credit union will serve the entire community. Finally, pursuant to this regulation, as well as Section 741.6 of NCUA's Rules and Regulations, the regional director may request periodic service status reports from a community credit union to ensure that the needs of the community are being met.

6. Underserved Areas

Three criteria must be met before an underserved area can be added to any federal credit union's field of membership. First, the area must be a local community. Second, the area must also be classified as an investment area as defined in section 103(16) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4703 (16)) and meet any additional requirements the Board may impose (the Board has not imposed any additional requirements). Third, the credit union adding the underserved area must establish and maintain an office or facility in the local community, neighborhood, or rural district.

After reviewing the statutory intent of service to underserved areas and the overall goal of improving credit union service to these areas, the NCUA Board proposed to modify the current polices relating to each of the three criteria in order to encourage further development of credit union activities in underserved areas and thereby improve financial services to those most in need.

First, the NCUA Board proposed that if a geographic area meets the requirements for an investment area, and the size of the investment area, whether contained wholly or in part of a single political jurisdiction or multiple political jurisdictions, meets the presumptive criteria established in IRPS 99–1, then the credit union will not have to demonstrate common interests or interaction among the residents. Accordingly, the NCUA Board proposed that Chapter III, Section III, should be amended to state that the ''well-defined local community, neighborhood, or rural district'' requirement will be met if:

(1) the underserved area to be served is in a recognized single political jurisdiction, *i.e.*, a county or its political equivalent or any contiguous political subdivisions contained therein, and if the population of the requested well-defined area does not exceed 300,000, or

(2) the underserved area to be served is in multiple contiguous political jurisdictions, *i.e.,* a county or its political equivalent or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 200,000.

Second, the NCUA Board proposed that if the area meets the poverty, median family income, unemployment, distressed housing, or population loss criteria as set forth in the Community Development Banking and Financial Institutions Act of 1994, then the Board will presume that there are significant unmet needs for loans or equity investments.

Third, the NCUA Board proposed that at the time the underserved area is added to the credit union's field of membership, a plan must be in place to establish and maintain an office or facility within two years. In addition to a permanent office or facility, this requirement may also be satisfied through periodic service to the underserved area through the use of a mobile office, an office open at select times each week, a service facility or shared service facilities. A credit union that has multiple underserved areas in its field of membership must meet the statutory requirement for each underserved area unless the underserved areas are contiguous. In addition, the NCUA Board proposed that if a credit union has a preexisting service facility within close proximity to the underserved area(s), then it will not be required to maintain a service facility within the underserved area. Close proximity will be determined on a case-by-case basis. However, the service facility must be readily accessible to the residents and the distance from the underserved area to the service facility should not be an impediment to a majority of the residents to transact credit union business.

Twelve commenters approved of the amendments regarding underserved areas. One of these commenters stated

that a service facility is close to an underserved area if it is accessible by public transportation or within walking distance. Another commenter suggested a service facility is not necessary and a credit union could use electronic means to serve the underserved community. Two commenters opposed the change on the location of the service facility stating that it is contrary to statute.

The NCUA Board is adopting the changes as proposed in the final rule. To clarify, the credit union adding the underserved area must establish a service facility within the underserved area within a two-year period, or the credit union's service facility must be reasonably proximate to the underserved area. The key to the reasonably proximate concept is that the availability of products and services be easily accessible to community residents.

In addition to the amendments discussed above, the Board requested comment on providing incentives for credit unions to add underserved communities if the underserved community is a minimum population size. Comments were specifically requested on what the population size of the underserved area should be in order for the credit union to qualify for one or more of the following incentives:

- The asset base used to compute the credit union's operating fee will be frozen for a two-year period.
- The operating fee will be reduced by ten percent or more per year until the total reduction equals $20,000 over a maximum five-year period.
- The assets of the underserved area will not be included in the calculation of the credit union's operating fee for five years.
- Fixed assets in the underserved area will not be counted toward the fixed asset limitation of § 701.35 of NCUA's Rules and Regulations. In addition, the credit union would be exempt from the charitable donation regulation, § 701.25, and would be allowed to increase the dollar threshold from $100,000 to $250,000 when an appraisal is required, § 722.3(a)(1).

Two commenters stated that the final rule should provide incentives for adding underserved areas, but did not suggest any specific incentive. One commenter appeared to approve of all the incentives, but suggested a minimum size for the underserved area for the incentives to be applicable. Another commenter stated that there should be no minimum size. One commenter believes that incentives to encourage the addition of underserved areas should be geared to performance. This commenter further stated that no credit union should receive any incentive if it simply adds an underserved area, but fails to serve the low-income population therein. Assuming that NCUA links incentives to performance, this commenter would support the regulatory waivers set forth above.

One commenter stated that providing incentives for adding underserved areas needs further study before any of them are implemented. One commenter specifically opposed the operating fee incentive. One commenter specifically opposed exempting credit unions from certain regulations simply because they added an underserved area. One commenter believes NCUA should encourage and support credit unions that serve underserved groups but did not approve of the cited incentives. Three commenters did not approve of having incentives to add underserved areas.

One commenter stated that credit unions adding underserved areas should get special consideration of loan delinquency or loss experience in connection with serving an underserved community. One commenter suggested that NCUA consider allowing credit unions that serve underserved areas to accept some form of secondary capital account or nonmember deposit that would be considered regulatory net worth.

One commenter suggested that, instead of incentives, NCUA establish a grant program wherein credit unions could apply for monetary awards based on the extent of their operations in underserved communities. One commenter did not approve of the incentives, but suggested deleting a regional director's ability to request a credit union's service status report on serving an underserved area. One commenter requested NCUA always request periodic service status reports on serving underserved areas.

At this time, the NCUA Board is deferring any immediate action regarding providing incentives to credit union's adding underserved areas. As a result of the changes adopted in this final regulation, it would appear that additional incentives may not be necessary. Further, the Board is encouraged that as of September 30, 2000, thirty credit unions have added underserved areas, as opposed to nine in 1999. The Board will continue to monitor this issue, and if more incentives are required to increase service to underserved areas, it will again be reviewed. The NCUA Board is also intrigued by the idea of a grant program and will further consider this idea.

The NCUA Board still believes that it is important for the regional director to have the discretion to ask for service status reports to determine if the underserved areas are being adequately served by the credit union. This data is especially important if the credit union seeks to add additional underserved areas. In addition, this information may prove useful in determining what type of problems credit unions may encounter in serving underserved areas.

7. Miscellaneous

One commenter stated that the unavailability of credit union service should not factor into reasonable proximity. Two commenters requested that NCUA add the following sentence in the preamble to the proposed rule to the final rule: ''the non-availability of other credit unions is a factor to be considered in determining whether the group is within reasonable proximity * * *'' of a credit union wishing to add the group to its field of membership. The NCUA Board agrees with these two commenters and has incorporated this statement with an additional clarification in the final rule.

One commenter encouraged NCUA to continue to consider the ''reasonable proximity'' issue on a case-by-case basis to enable credit unions with the greatest opportunity to reach out to consumers, especially those living in underserved communities. One commenter stated that NCUA should avoid mileage limitations in defining reasonable proximity. To restate current policy, the NCUA Board does not have any mileage limitations for adding select groups and defines reasonable proximity on a case-by-case basis as was previously discussed in the preamble to IRPS 99–1. 63 FR 71988, 72002–72003 (December 30, 1998).

One commenter stated that NCUA's interpretation of ''single common bond credit union'' should include credit unions that can demonstrate meaningful affinity and bonds of groups other than on the basis of the employer entity or the association entity. One commenter requested that the definition of occupational common bond include trade, industry and professional designations. Although both of these suggestions would meet the legal requirements of CUMAA, the Board has operational concerns with such an approach and does not believe a broader definition is currently necessary.

One commenter asked that NCUA clarify that, for single common bond credit unions, additional sponsor-related groups can be added after the enactment of CUMAA, but that no unrelated groups can be added to single

common bond credit unions. This commenter's statement is correct. One commenter suggested that credit unions should be allowed to serve the customers of select groups that have been approved in their fields of membership. The NCUA Board disagrees and does not believe such an approach is legal under CUMAA.

One commenter requested that NCUA no longer require a letter from the group desiring credit union service in regard to a multiple group field of membership expansion. The NCUA Board disagrees with this commenter's suggestion. It should be a group's decision to affiliate with a credit union. Additionally, there are legal requirements in adding a group that a letter from the group may satisfy.

8. Technical Amendment on the Title of the Section Regarding Immediate Family Members

The Board proposed to change the titles of Chapter 2, Section II.H, Chapter II, Section III.H. and Chapter II, Section IV.H. to ''Other Persons Eligible for Credit Union Membership.'' The NCUA Board received no comment on this change and is adopting this amendment in final as proposed.

9. Express Chartering Program

The Field of Membership Taskforce and the Office of Examination and Insurance have developed and are ready to implement an express chartering program (ECP). The ECP utilizes standardized forms, NCUA on-site assistance, and certain restrictions on the initial services that may be offered. The ECP will be periodically reviewed by the Office of Examination and Insurance to determine whether it is achieving its intended purpose without creating additional risks to the National Credit Union Share Insurance Fund.

The ECP will use, to the greatest extent possible, standardized forms to facilitate the issuance of a charter early during the chartering process. They include:

- Model business plan for limited services;
- Standard member survey format;
- Policy guidelines (shares, lending, investments, *etc.*); and
- Sample letters for sponsor support, grants, and nonmember deposits (where applicable).

Initially, credit unions using ECP will only be able to offer basic services, some of which include regular shares, signature loans not exceeding predetermined amounts, and the sale of money orders and travelers checks. This will enable the officials to familiarize themselves with basic credit union operations and cash management skills. The Letter of Understanding and Agreement that always accompanies a new charter will include this restriction. An applicant credit union can elect not to use ECP; however, standard chartering procedures must then be used.

Once a credit union demonstrates it can manage these limited responsibilities, the officials can submit a new credit union prepared business plan to expand services (*e.g.,* share drafts, credit cards, *etc.*). This further refinement of the business plan can be accomplished in stages with increased responsibilities and services offered commensurate with the approved business plan.

The advantage of the ECP is that once the credit union is chartered, some services can be offered, and the officials will gain experience and knowledge in the operation of a credit union as they prepare a more detailed business plan to implement additional services. It is also believed that the importance of a business plan will be better understood if the officials are actually engaged in operating the credit union.

While NCUA's resources are limited, judicious use of NCUA staff to work with qualifying groups will be beneficial. The ECP will make use of the regional economic development specialists (EDS) to guide the group through the application process. Once the group is chartered, the EDS and examiner will work with the credit union, as they do now.

Internet Expansion Requests

The Field of Membership Taskforce and the Office of the Chief Information Officer have developed an internet select group expansion form, which is expected to be implemented when testing is completed. This process allows credit unions to submit requests for occupational groups of 500 or less primary potential members online with an expedited approval by NCUA. The regional directors can provide credit unions with specific details on how to do an expansion through the internet.

B. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The final amendments will not have a significant economic impact on a substantial number of small credit unions and therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The reporting requirements in IRPS 00–1 have been approved by the Office of Management and Budget. The OMB number is 3133–0015 and will be displayed in the table at 12 CFR 795.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This final rule only applies to federal credit unions. 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. NCUA has determined that the final rule does not constitute a policy that has federalism implications for purposes of the executive order.

Congressional Review

OMB has determined that the provisions of IRPS 00–1 do not constitute a major rule.

C. Agency Regulatory Goal

NCUA's goal is clear, understandable regulations that impose a minimal regulatory burden. We requested comments on whether the proposed amendments are understandable and minimally intrusive if implemented as proposed. No commenters addressed this issue, except in regard to CAP, which was previously addressed.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on October 19, 2000.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789.

Section 701.6 is also authorized by 15 U.S.C. 3717.

Section 701.31 is also authorized by 15 U.S.C. 1601, *et seq.*, 42 U.S.C. 1981 and 3601–3610.

Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

2. Section 701.1 is revised to read as follows:

§ 701.1 Federal credit union chartering, field of membership modifications, and conversions.

National Credit Union Administration policies concerning chartering, field of membership modifications, and conversions are set forth in Interpretive Ruling and Policy Statement 99–1, Chartering and Field of Membership Policy (IRPS 99–1), as amended by IRPS 00–1. Copies may be obtained by contacting NCUA at the address found in § 790.2(b) of this chapter. The combined IRPS are incorporated into this section.

(Approved by the Office of Management and Budget under control number 3133–0015.)

Note: The text of the Interpretive Ruling and Policy Statement (IRPS 99–1) does not, and the following amendments will not, appear in the Code of Federal Regulations.

3. In IRPS 99–1, Chapter 2, Section II.A is revised to read as follows:

A single occupational common bond federal credit union may include in its field of membership all persons and entities who share that common bond. NCUA permits a person's membership eligibility in a single occupational common bond group to be established in four ways:

- Employment (or a long-term contractual relationship equivalent to employment) in a single corporation or other legal entity makes that person part of an single occupational common bond;
- Employment in a corporation or other legal entity with a controlling ownership interest (which shall not be less than 10 percent) in or by another legal entity makes that person part of a single occupational common bond;
- Employment in a corporation or other legal entity which is related to another legal entity (such as a company under contract and possessing a strong dependency relationship with another company) makes that person part of a single occupational common bond; or
- Employment or attendance at a school makes that person part of a single occupational common bond (see Chapter 2, III.A.1).

A geographic limitation is not a requirement for a single occupational common bond. However, for purposes of describing the field of membership, the geographic areas being served will be included in the charter. For example:

- Employees, officials, and persons who work regularly under contract in Miami, Florida for ABC Corporation or the subsidiaries listed below;
- Employees of ABC Corporation who are paid from * * *;
- Employees of ABC Corporation who are supervised from * * *;
- Employees of ABC Corporation who are headquartered in * * *; and/or
- Employees of ABC Corporation who work in the United States.

So that NCUA may monitor any potential field of membership overlaps, each group to be served (*e.g.*, new employees of subsidiaries, franchisees, and contractors) should be separately listed in Section 5 of the charter. However, in situations where multiple contractors, who qualify based on a strong dependency relationship, are sole proprietors, the regional director may determine that more generalized wording is acceptable (*e.g.*, ''non-incorporated owner-operators who work regularly under contract to AJM Industries, Inc. in Glenville, New York''). In addition, it is permissible to simply state in a single common bond charter the following: ''AJM Industries, Inc. and its subsidiaries.'' If AJM Industries, Inc. adds new subsidiaries the charter can be amended with a simple housekeeping amendment and no overlap analysis is required.

The corporate or other legal entity (*i.e.*, the employer) may also be included in the common bond—*e.g.*, ''ABC Corporation.'' The corporation or legal entity will be defined in the last clause in Section 5 of the credit union's charter.

A charter applicant must provide documentation to establish that the single occupational common bond requirement has been met.

Some examples of a single occupational common bond are:

- Employees of the Hunt Manufacturing Company who work in West Chester, Pennsylvania. (common bond—same employer with geographic definition);
- Employees of the Buffalo Manufacturing Company who work in the United States. (common bond—same employer with geographic definition);
- Employees, elected and appointed officials of municipal government in Parma, Ohio. (common bond—same employer with geographic definition);
- Employees of Johnson Soap Company and its majority owned subsidiary, Johnson Toothpaste Company, who work in, are paid from, are supervised from, or are headquartered in Augusta and Portland, Maine. (common bond—parent and subsidiary company with geographic definition);
- Employees of MMLLJS contractor who work regularly at the U.S. Naval Shipyard in Bremerton, Washington. (common bond—employees of contractors with geographic definition);
- Employees, doctors, medical staff, technicians, medical and nursing students who work in or are paid from the Newport Beach Medical Center, Newport Beach, California. (single corporation with geographic definition);
- Employees of JLS, Incorporated and MJM, Incorporated working for the LKM Joint Venture Company in Catalina Island, California. (common bond—same employer—ongoing dependent relationship);
- Employees of and students attending Georgetown University. (common bond—same occupation); or
- Employees of all the schools supervised by the Timbrook Board of Education in Timbrook, Georgia. (common bond—same employer).

Some examples of insufficiently defined single occupational common bonds are:

- Employees of manufacturing firms in Seattle, Washington. (no defined occupational sponsor);
- Persons employed or working in Chicago, Illinois. (no occupational common bond);
- Employees of all colleges and universities in the State of Texas. (not a single occupational common bond); or
- Employees of Timbrook School District and Swanbrook School District, in Burns, Georgia. (not a single occupational common bond).

4. In IRPS 99–1, Chapter 2, Section III.A.1 is revised to read as follows:

A single associational federal credit union may include in its field of membership, regardless of location, all members and employees of a recognized association. A single associational common bond consists of individuals (natural persons) and/or groups (non natural persons) whose members participate in activities developing common loyalties, mutual benefits, and mutual interests. Separately chartered associational groups can establish a single common bond relationship if they are integrally related and share common goals and purposes. For example, two or more churches of the same denomination, Knights of Columbus Councils, or locals of the same union can qualify as a single associational common bond.

Individuals and groups eligible for membership in a single associational credit union can include the following:

- Natural person members of the association (for example, members of a union or church members);
- Non-natural person members of the association;
- Employees of the association (for example, employees of the labor union or employees of the church); and
- The association.

Generally, a single associational common bond does not include a geographic definition. However, a proposed or existing federal credit union may limit its field of membership to a single association or geographic area. NCUA may impose a geographic limitation if it is determined that the applicant credit union does not have the ability to serve a larger group or there are other operational concerns. All single associational common bonds will include a definition of the group that may be served based on the effective date of the association's charter, bylaws, and any other equivalent documentation. If the associational charter crosses NCUA regional boundaries, each of the affected regional directors must be consulted prior to NCUA action on the charter.

Qualifying associational groups must hold meetings open to all members, must sponsor

other activities which demonstrate that the members of the group meet to accomplish the objectives of the association, and must have an authoritative definition of who is eligible for membership. Usually, this will be found in the association's charter and bylaws.

The common bond for an associational group cannot be established simply on the basis that the association exists. In determining whether a group satisfies associational common bond requirements for a federal credit union charter, NCUA will consider the totality of the circumstances, such as:

- Whether members pay dues;
- Whether members participate in the furtherance of the goals of the association;
- Whether the members have voting rights. To meet this requirement, members need not vote directly for an officer, but may vote for a delegate who in turn represents the members' interests;
- Whether the association maintains a membership list;
- The association's membership eligibility requirements; and
- The frequency of meetings.

A support group whose members are continually changing or whose duration is temporary may not meet the single associational common bond criteria. Individuals or honorary members who only make donations to the association are not eligible to join the credit union. Other classes of membership that do not meet to accomplish the goals of the association would not qualify.

Educational groups—for example, parent-teacher organizations, alumni associations, and student organizations in any school—and church groups constitute associational common bonds and may qualify for a federal credit union charter.

Student groups (*e.g.*, students enrolled at a public, private, or parochial school) may constitute either an associational or occupational common bond. For example, students enrolled at a church sponsored school could share a single associational common bond with the members of that church and may qualify for a federal credit union charter. Similarly, students enrolled at a university, as a group by itself, or in conjunction with the faculty and employees of the school, could share a single occupational common bond and may qualify for a federal credit union charter (see Charter 2, II.A).

Homeowner associations, tenant groups, co-ops, consumer groups, and other groups of persons having an ''interest in'' a particular cause and certain consumer cooperatives may also qualify as an association.

The terminology ''Alumni of Jacksonville State University'' is insufficient to demonstrate an associational common bond. To qualify as an association, the alumni association must meet the requirements for an associational common bond. The alumni of a school must first join the alumni association, and not merely be alumni of the school to be eligible for membership.

Associations based primarily on a client-customer relationship do not meet associational common bond requirements. However, having an incidental client-customer relationship does not preclude an associational charter as long as the associational common bond requirements are met. For example, a fraternal association that offers insurance, which is not a condition of membership, may qualify as a valid associational common bond.

Applicants for a single associational common bond federal credit union charter or a field of membership amendment to include an association must provide, at the request of the regional director, a copy of the association's charter, bylaws, or other equivalent documentation, including any legal documents required by the state or other governing authority.

The associational sponsor itself may also be included in the field of membership—*e.g.*, ''Sprocket Association''—and will be shown in the last clause of the field of membership.

5. In IRPS 99–1, Chapter 2, Section II.B.4 and Section III.B.4 replace the number ''200'' with the number ''500.'':

6. In IRPS 99–1, Chapter 2, Section IV.B.3 is revised to read as follows:

A multiple common bond credit union requesting a select group expansion must submit a formal written request, using the Application for Field of Membership Amendment (NCUA 4015) to the appropriate NCUA regional director. If a credit union is adding a group of 500 or less primary potential members, then the NCUA 4015–EZ should be used. The request must be signed by an authorized credit union representative.

The NCUA 4015 (for groups in excess of 500 primary potential members) must be accompanied by the following:

- A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:

—The group's occupational or associational common bond;
—That the group wants to be added to the federal credit union's field of membership;
—Whether the group presently has other credit union service available;
—The number of persons currently included within the group to be added and their locations;
—The group's proximity to credit union's nearest service facility, *and*
—Why the formation of a separate credit union for the group is not practical or consistent with safety and soundness standards, and provide comments on as many of the following factors that are applicable (A credit union need not address every item on the list, simply those issues that are relevant to its particular request):

- Member location—whether the membership is widely dispersed or concentrated in a central location.
- Demographics—the employee turnover rate, economic status of the group's members, and whether the group is more apt to consist of savers and/or borrowers.
- Market competition—the availability of other financial services.
- Desired services and products—the type of services the group desires in comparison to the type of services a new credit union could offer.
- Sponsor subsidies—the availability of operating subsidies.
- The desire of the sponsor.
- Employee interest—the extent of the employees' interest in obtaining a credit union charter.
- Evidence of past failure—whether the group previously had its own credit union or previously filed for a credit union charter.
- Administrative capacity to provide services—will the group have the management expertise to provide the services requested.
- If the group is eligible for membership in any other credit union, documentation must be provided to support inclusion of the group under the overlap standards set forth in Section IV.E of this Chapter; and
- The most recent copy of the group's charter and bylaws or equivalent documentation (for associational groups).

The NCUA 4015–EZ (for groups of 500 or less primary potential members) must be accompanied by the following:

- A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:

—How the group shares the credit union's occupational or associational common bond;
—That the group wants to be added to the applicant federal credit union's field of membership;
—The number of persons currently included within the group to be added and their locations; and

- The group's proximity to credit union's nearest service facility.
- The most recent copy of the group's charter and bylaws or equivalent documentation (for associational groups).

7. In IRPS 99–1, Chapter 2, Section II.E.1 is revised to read as follows:

An overlap exists when a group of persons is eligible for membership in two or more credit unions. As a general rule, NCUA will not charter two or more credit unions to serve the same single occupational group. An overlap is permitted when the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership clearly outweighs any adverse effect on the overlapped credit union. However, when two or more credit unions are attempting to serve the same occupational group, an overlap can be permitted.

Proposed or existing credit unions must investigate the possibility of an overlap with federally insured credit unions prior to submitting an application for a proposed charter or expansion if the group(s) is greater than 500 primary potential members.

When an overlap situation does arise, officials of the involved credit unions must

attempt to resolve the overlap issue. If the matter is resolved between the affected credit unions, the applicant must submit a letter to that effect from the credit union whose field of membership already includes the subject group.

If no resolution is possible or the overlapped credit union fails to provide a letter, an application for a new charter or field of membership expansion may still be submitted, but must also include information regarding the overlap and documented attempts at resolution. Documentation on the interests of the group, such as a petition signed by a majority of the group's members, will be strongly considered.

An overlap will not be considered adverse to the overlapped credit union if:

- The group has 500 or less primary potential members or the overlap is otherwise incidental in nature—*i.e.,* the group of persons in question is so small as to have no material effect on the original credit union;
- The overlapped credit union does not object to the overlap; or
- There is limited participation by members or employees of the group in the original credit union after the expiration of a reasonable period of time.

In reviewing the overlap, the regional director will consider:

- The nature of the issue;
- Efforts made to resolve the matter;
- Financial effect on the overlapped credit union;
- The desires of the group(s);
- Whether the original credit union fails to provide requested service;
- The desire of the sponsor organization; and
- The best interests of the affected group and the credit union members involved.

Potential overlaps of a federally insured state credit union's field of membership by a federal credit union will generally be analyzed in the same way as if two federal credit unions were involved. Where a federally insured state credit union's field of membership is broadly stated, NCUA will exclude its field of membership from any overlap protection.

New charter applicants and every single occupational common bond group which comes before the regional director for affiliation with an existing federal credit union must advise the regional director in writing whether the group is included within the field of membership of any other credit union except a community charter. This notification requirement is not applicable to groups with 500 or less primary potential members. If cases arise where the assurance given to a regional director concerning unavailability of credit union service is inaccurate, the misinformation is grounds for removal of the group from the federal credit union's charter.

NCUA will permit single occupational federal credit unions to overlap community charters without performing an overlap analysis.

8. In IRPS 99–1, Chapter 2, Section II.E.2 is revised to read as follows:

A federal credit union's field of membership will always be governed by the common bond descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the common bond described in Section 5. Where acquisitions are made which add a new subsidiary, the group cannot be served until the subsidiary is included in the field of membership through a housekeeping amendment.

Overlaps may occur as a result of restructuring or merger of the parent organization. Credit unions affected by organizational restructuring or merger should attempt to resolve overlap issues among themselves. If an agreement is reached, they must apply to NCUA for a modification of their fields of membership to reflect the groups each will serve. Unless an agreement is reached limiting the overlap resulting from the corporate restructuring, NCUA will permit a complete overlap of the credit unions' fields of membership.

In addition, credit unions must submit to NCUA documentation explaining the restructuring and providing information regarding the new organizational structure. The credit union must identify divisions and subsidiaries and the locations of each. Where the sponsor and its employees desire to continue service, NCUA may use wording such as the following:

- Employees of Lucky Corporation, formerly a subsidiary of Tool, Incorporated, located in Charleston, South Carolina.

9. In IRPS 99–1, Chapter 2, Section III.E.1 is revised to read as follows:

An overlap exists when a group of persons is eligible for membership in two or more credit unions. As a general rule, NCUA will not charter two or more credit unions to serve the same single associational group. An overlap is permitted when the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership clearly outweighs any adverse effect on the overlapped credit union. However, when two or more credit unions are attempting to serve the same associational group, an overlap can be permitted.

Proposed or existing credit unions must investigate the possibility of an overlap with federally insured credit unions prior to submitting an application for a proposed charter or expansion if the group(s) is greater than 500 primary potential members.

When an overlap situation does arise, officials of the involved credit unions must attempt to resolve the overlap issue. If the matter is resolved between the credit unions, the applicant must submit a letter to that effect from the credit union whose field of membership already includes the subject group.

If no resolution is possible or the overlapped credit union fails to provide a letter, an application for a new charter or field of membership expansion may still be submitted, but must also include information regarding the overlap and documented attempts at resolution. Documentation on the interests of the group, such as a petition signed by a majority of the group's members, will be strongly considered.

An overlap will not be considered adverse to the overlapped credit union if:

- The group has 500 or less primary potential members or the overlap is otherwise incidental in nature—*i.e.,* the group of persons in question is so small as to have no material effect on the original credit union;
- The overlapped credit union does not object to the overlap;
- There is limited participation by members of the group in the original credit union after the expiration of a reasonable period of time; or
- The field of membership is broadly stated, such as a national association.

In reviewing the overlap, the regional director will consider:

- The nature of the issue;
- Efforts made to resolve the matter;
- Financial effect on the overlapped credit union;
- The desires of the group(s);
- Whether the original credit union fails to provide requested service;
- The desire of the sponsor organization; and
- The best interests of the affected group and the credit union members involved.

Potential overlaps of a federally insured state credit union's field of membership by a federal credit union will generally be analyzed in the same way as if two federal credit unions were involved. Where a federally insured state credit union's field of membership is broadly stated, NCUA will exclude its field of membership from any overlap protection.

New charter applicants and every single associational common bond group which comes before the regional director for affiliation with an existing federal credit union must advise the regional director in writing whether the group is included within the field of membership of any other credit union except a community charter. This notification requirement is not applicable to groups with 500 or less primary potential members. If cases arise where the assurance given to a regional director concerning unavailability of credit union service is inaccurate, the misinformation is grounds for removal of the group from the federal credit union's charter.

NCUA will permit single associational federal credit unions to overlap community charters without performing an overlap analysis.

10. In IRPS 99–1, Chapter 2, Section III.E.2 is revised to read as follows:

A federal credit union's field of membership will always be governed by the common bond descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the common bond described in Section 5.

Overlaps may occur as a result of restructuring or merger of the parent organization. Credit unions affected by organizational restructuring or merger should

attempt to resolve overlap issues among themselves. If an agreement is reached, they must apply to NCUA for a modification of their fields of membership to reflect the groups each will serve. Unless an agreement is reached limiting the overlap resulting from the corporate restructuring, NCUA will permit a complete overlap of the credit unions' fields of membership.

11. In IRPS 99–1, Chapter 2, Section IV.E.2 is revised to read as follows:

A federal credit union's field of membership will always be governed by the field of membership descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of any select group listed in Section 5. Where acquisitions are made which add a new subsidiary, the group cannot be served until the subsidiary is included in the field of membership through a housekeeping amendment.

Overlaps may occur as a result of restructuring or merger of the parent organization. When such overlaps occur, each credit union must request a field of membership amendment to reflect the new groups each wishes to serve. The credit union can continue to serve any current group in its field of membership that is acquiring a new group or has been acquired by a new group. The new group cannot be served by the credit union until the field of membership amendment is approved by NCUA.

Credit unions affected by organizational restructuring or merger should attempt to resolve overlap issues among themselves. Unless an agreement is reached limiting the overlap resulting from the corporate restructuring, NCUA will permit a complete overlap of the credit unions' fields of membership. When two groups merge, or one group is acquired by the other, and each is in the field of membership of a credit union, both (or all affected) credit unions can serve the resulting merged or acquired group, subject to any existing geographic limitation and without regard to any overlap provisions. This can be accomplished through a housekeeping amendment.

In addition, credit unions must submit to NCUA documentation explaining the restructuring and providing information regarding the new organizational structure. The credit union must identify divisions and subsidiaries and the locations of each. Where the sponsor and its employees desire to continue service, NCUA may use wording such as the following:

• Employees of MHS Corporation, formerly a subsidiary of Tool, Incorporated, located in Charleston, South Carolina.

12. In IRPS 99–1, Chapter 2, Section IV.A.1 is revised to read as follows:

A federal credit union may be chartered to serve a combination of distinct, definable single occupational and/or associational common bonds. This type of credit union is called a multiple common bond credit union. Each group in the field of membership must have its own occupational or associational common bond. For example, a multiple common bond credit union may include two unrelated employers, or two unrelated associations, or a combination of two or more employers or associations. Additionally, these groups must be within reasonable geographic proximity of the credit union. That is, the groups must be within the service area of one of the credit union's service facilities. These groups are referred to as select groups. A multiple common bond credit union cannot expand using single common bond criteria.

A federal credit union's service area is the area that can reasonably be served by the service facilities accessible to the groups within the field of membership. The service area will most often coincide with that geographic area primarily served by the service facility. Additionally, the groups served by the credit union must have access to the service facility. The non-availability of other credit union service is a factor to be considered in determining whether the group is within reasonable proximity of a credit union wishing to add the group to its field of membership.

A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted, and loans are disbursed. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. A service facility also includes a shared branch if the credit union either (1) owns directly or through a CUSO or similar organization at least a 5 percent interest in the service facility, or (2) the service facility is local to the credit union and the credit union is an authorized participant in the service center. This definition does not include an ATM.

The select group as a whole will be considered to be within a credit union's service area when:

• A majority of the persons in a select group live, work, or gather regularly within the service area;

• The group's headquarters is located within the service area; or

• The group's ''paid from'' or ''supervised from'' location is within the service area.

13. In IRPS 99–1, Chapter 2, Section IV.B.2 is revised to read as follows:

An existing multiple common bond federal credit union that submits a request to amend its charter must provide documentation to establish that the multiple common bond requirements have been met. All amendments to a multiple common bond credit union's field of membership must be approved by the regional director.

NCUA will approve groups to a credit union's field of membership, if the agency determines in writing that the following criteria are met:

• The credit union has not engaged in any unsafe or unsound practice, as determined by the regional director, which is material during the one year period preceding the filing to add the group;

• The credit union is ''adequately capitalized.'' NCUA defines adequately capitalized to mean the credit union has a net worth ratio of not less than 6 percent. For low-income credit unions or credit unions chartered less than ten years, the regional director may determine that a net worth ratio of less than 6 percent is adequate if the credit union is making reasonable progress toward meeting the 6 percent net worth requirement. For any other credit union, the regional director may determine that a net worth ratio of less than 6 percent is adequate if the credit union is making reasonable progress toward meeting the 6 percent net worth requirement, and the addition of the group would not adversely affect the credit union's capitalization level.

• The credit union has the administrative capability to serve the proposed group and the financial resources to meet the need for additional staff and assets to serve the new group;

• Any potential harm the expansion may have on any other credit union and its members is clearly outweighed by the probable beneficial effect of the expansion. With respect to a proposed expansion's effect on other credit unions, the requirements on overlapping fields of membership set forth in Section IV.E of this Chapter are also applicable; and

• If the formation of a separate credit union by such group is not practical and consistent with reasonable standards for the safe and sound operation of a credit union.

A more detailed analysis is required for groups of 3,000 or more primary potential members requesting to be added to a multiple common bond credit union; however, only groups over 500 must address why they cannot form their own credit union. It is incumbent upon the credit union to demonstrate that the formation of a separate credit union by such a group is not practical. The group must provide evidence that it lacks sufficient volunteer and other resources to support the efficient and effective operations of a credit union or does not meet the economic advisability criteria outlined in Chapter 1. If this can be demonstrated, the group may be added to a multiple common bond credit union's field of membership.

14. In IRPS 99–1, Chapter 2, Section IV.E.1 is revised to read as follows:

An overlap exists when a group of persons is eligible for membership in two or more credit unions, including state charters. An overlap is permitted when the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership clearly outweighs any adverse effect on the overlapped credit union.

Proposed or existing credit unions must investigate the possibility of an overlap with federally insured credit unions prior to submitting an application for a proposed charter or expansion if the group(s) is greater than 500 primary potential members. An overlap analysis is not required for groups with 500 or less primary potential members.

When an overlap situation requiring analysis does arise, officials of the expanding credit union must ascertain the views of the overlapped credit union. If the overlapped credit union does not object, the applicant

must submit a letter or other documentation to that effect. If the overlapped credit union does not respond, the expanding credit union must notify NCUA in writing of its attempt to obtain the overlapped credit union's comments.

NCUA will generally not approve an overlap unless the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in field of membership clearly outweighs any adverse effect on the overlapped credit union.

In reviewing the overlap, the regional director will consider:

- The view of the overlapped credit union(s);
- Whether the overlap is incidental in nature—the group of persons in question is so small as to have no material effect on the original credit union;
- Whether there is limited participation by members or employees of the group in the original credit union after the expiration of a reasonable period of time;
- Whether the original credit union fails to provide requested service;
- Financial effect on the overlapped credit union;
- The desires of the group(s);
- The desire of the sponsor organization; and
- The best interests of the affected group and the credit union members involved.

Generally, if the overlapped credit union does not object, and NCUA determines that there is no safety and soundness problem, the overlap will be permitted.

Potential overlaps of a federally insured state credit union's field of membership by a federal credit union will generally be analyzed in the same way as if two federal credit unions were involved. Where a federally insured state credit union's field of membership is broadly stated, NCUA will exclude its field of membership from any overlap protection.

New charter applicants and every select group which comes before the regional director for affiliation with an existing federal credit union must advise the regional director in writing whether the group is included within the field of membership of any other credit union. This requirement is not applicable to groups with 500 or less primary potential members. If cases arise where the assurance given to a regional director concerning unavailability of credit union service is inaccurate, the misinformation is grounds for removal of the group from the federal credit union's charter.

NCUA will permit multiple common bond federal credit unions to overlap community charters without performing an overlap analysis.

15. In IRPS 99–1, Chapter 2, Section IV.D.1 is revised to read as follows:

a. All Select Groups in the Merging Credit Union's Field of Membership Have Less Than 3,000 Primary Potential Members

A voluntary merger of two or more federal credit unions is permissible as long as each select group in the merging credit union's field of membership has less than 3,000 primary potential members. While the merger requirements outlined in Section 205 of the Federal Credit Union Act must still be met, the requirements of Chapter 2, Section IV.B.2 of this manual are not applicable.

b. One or More Select Groups in the Merging Credit Union's Field of Membership Has 3,000 or More Primary Potential Members

If the merging credit unions serve the same group, and the group consists of 3,000 or more primary potential members, then the ability to form analysis is not required for that group. If the merging credit union has any other groups consisting of 3,000 or more primary potential members, special requirements apply. NCUA will analyze each group of 3,000 or more primary potential members, except as noted above, to determine whether the formation of a separate credit union by such a group is practical. If the formation of a separate credit union by such a group is not practical because the group lacks sufficient volunteer and other resources to support the efficient and effective operations of a credit union or does not meet the economic advisable criteria outlined in Chapter 1, the group may be merged into a multiple common bond credit union. If the formation of a separate credit union is practical, the group must be spun-off before the merger can be approved.

c. Merger of a Single Common Bond Credit Union into a Multiple Common Bond Credit Union

A financially healthy single common bond credit union with a primary potential membership in excess of 3,000 primary potential members cannot merge into a multiple common bond credit union, absent supervisory reasons.

d. Merger Approval

If the merger is approved, the qualifying groups within the merging credit union's field of membership will be transferred intact to the continuing credit union and can continue to be served.

Where the merging credit union is state-chartered, the field of membership rules applicable to a federal credit union apply.

Mergers must be approved by the NCUA regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

16. In IRPS 99–1, Chapter 2, Section IV.D.2 is revised to read as follows:

The NCUA may approve the merger of any federally insured credit union when safety and soundness concerns are present without regard to the 3,000 numerical limitation. The credit union need not be insolvent or in danger of insolvency for NCUA to use this statutory authority. Examples constituting appropriate reasons for using this authority are: abandonment of the management and/or officials and an inability to find replacements, loss of sponsor support, serious and persistent record keeping problems, sustained material decline in financial condition, or other serious or persistent circumstances.

17. In IRPS 99–1, Chapter 2, Section IV.F is revised to read as follows:

A multiple common bond federal credit union may apply to convert to a community charter provided the field of membership requirements of the community charter are met. Groups within the existing charter which cannot qualify in the new charter cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion. Members of record can continue to be served. Also, in order to support a case for a conversion, the applicant federal credit union may be required to develop a detailed business plan as specified in Chapter 1, Section IV.D.

A multiple common bond federal credit union may apply to convert to a single occupational or associational common bond charter provided the field of membership requirements of the new charter are met. Groups within the existing charter which cannot qualify in the new charter cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion. However, a credit union can continue to serve any group included in, or added to, its single common bond field of membership at the time of conversion to a single common bond credit union for a period of three years from the date of conversion if the group is later sold, spun-off or otherwise divested as a result of a corporate reorganization/restructuring. If the credit union elects to continue to serve any sold, spun-off or otherwise divested group after three years from the date of conversion, then it must convert back to a multiple common bond credit union. During this three-year period, it will continue to be treated as a single common bond credit union.

Once a multiple common bond credit union converts to a single occupational or assocational credit union, it cannot convert back to a multiple common bond credit union for a period of three years, unless there are safety and soundness concerns.

18. In IRPS 99–1, Chapter 2, Section II.B.2 is revised to read as follows:

If the single common bond group that comprises a federal credit union's field of membership undergoes a substantial restructuring, the result is often that portions of the group are sold or spun off. This is an event which requires a change to the credit union's field of membership. NCUA will not permit a single common bond credit union to maintain in its field of membership a sold or spun-off group to which it has been providing service unless the group otherwise qualifies for membership in the credit union or if the credit union converts to a multiple common bond credit union.

If the group comprising the single common bond of the credit union merges with, or is acquired by, another group, the credit union can serve the new group resulting from the merger or acquisition after receiving a housekeeping amendment.

19. In IRPS 99–1, Chapter 2, Section III.B.2 is revised to read as follows:

If the single common bond group that comprises a federal credit union's field of membership undergoes a substantial restructuring, the result is often that portions of the group are sold or spun off. This is an event which requires a change to the credit union's field of membership. NCUA may not permit a single associational credit union to maintain in its field of membership a sold or spun-off group to which it has been providing service unless the group otherwise qualifies for membership in the credit union or the credit union converts to a multiple common bond credit union.

If the group comprising the single common bond of the credit union merges with, or is acquired by, another group, the credit union can serve the new group resulting from the merger or acquisition after receiving a housekeeping amendment.

20. In IRPS 99–1, Chapter 2, Section IV.B.4 is revised to read as follows:

If a select group within a federal credit union's field of membership undergoes a substantial restructuring, a change to the credit union's field of membership may be required if the credit union is to continue to provide service to the select group. NCUA permits a multiple common bond credit union to maintain in its field of membership a sold, spun-off, or merged select group to which it has been providing service. This type of amendment to the credit union's charter is not considered an expansion; therefore the criteria relating to adding new groups are not applicable.

When two groups merge and each is in the field of membership of a credit union, then both (or all affected) credit unions can serve the resulting merged group, subject to any existing geographic limitation and without regard to any overlap provisions. However, the credit unions cannot serve the other multiple groups that may be in the field of membership of the other credit union.

21. In IRPS 99–1, Chapter 2, Section V.A.2 is revised to read as follows:

In addition to the documentation requirements set forth in Chapter 1 to charter a credit union, a community credit union applicant must provide additional documentation addressing the proposed area to be served and community service policies.

A community credit union is unique in that it must meet the statutory requirements that the proposed community area is (1) well-defined, and (2) a local community, neighborhood, or rural district.

''Well-defined'' means the proposed area has specific geographic boundaries. Geographic boundaries may include a city, township, county (or its political equivalent), or clearly identifiable neighborhood. Although congressional districts or other political boundaries which are subject to occasional change, and state boundaries are well-defined areas, they do not meet the second requirement that the proposed area be a local community, neighborhood, or rural district.

The meaning of local community, neighborhood, or rural district includes a variety of factors. Most prominent is the requirement that the residents of the proposed community area interact or have common interests. In determining interaction and/or common interests, a number of factors become relevant. For example, the existence of a single major trade area, shared governmental or civic facilities, or area newspaper is significant evidence of community interaction and/or common interests. Conversely, numerous trade areas, multiple taxing authorities, and multiple political jurisdictions, tend to diminish the characteristics of a local area.

Population and geographic size are also significant factors in determining whether the area is local in nature. A large population in a small geographic area or a small population in a large geographic area may meet NCUA community chartering requirements. For example, an ethnic neighborhood, a rural area, a city, and a county with 300,000 or less residents will generally have sufficient interaction and/or common interests to meet community charter requirements. While this may most often be true, it does not preclude community charters consisting of multiple counties or local areas with populations of any size from meeting community charter requirements.

Conversely, a larger population in a large geographic area may not meet NCUA community chartering requirements. It is more difficult for a major metropolitan city, a densely populated county, or an area covering multiple counties with significant population to have sufficient interaction and/or common interests, and to therefore demonstrate that these areas meet the requirement of being ''local.'' In such cases, documentation supporting the interaction and/or common interests will be greater than the evidence necessary for a smaller and less densely populated area.

In most cases, the ''well-defined local community, neighborhood, or rural district'' requirement will be met if (1) the area to be served is in a recognized single political jurisdiction, *i.e.,* a county or its political equivalent or any contiguous political subdivisions contained therein, and if the population of the requested well-defined area does not exceed 300,000, or (2) the area to be served is in multiple contiguous political jurisdictions, *i.e.* a county or its political equivalent or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 200,000. If the proposed area meets either of these criteria, the credit union must only submit a letter describing how the area meets the standards for community interaction or common interests.

If NCUA does not find sufficient evidence of community interaction or common interests, more detailed documentation will be necessary to support that the proposed area is a well-defined community. The credit union must also provide evidence of the political jurisdiction(s) and population. Evidence of the political jurisdiction(s) should include maps designating the area to be served. One map must be a regional or state map with the proposed community outlined. The other map must outline the proposed community and the identifying geographic characteristics of the surrounding areas.

If the area to be served does not meet the political jurisdiction(s) and population requirements of the preceding paragraph, or if required by NCUA, the application must include documentation to support that it is a well-defined local community, neighborhood, or rural district. It is the applicant's responsibility to demonstrate the relevance of the documentation provided in support of the application. This must be provided in a narrative summary. The narrative summary must explain how the documentation demonstrates interaction or common interests. For example, simply listing newspapers and organizations in the area is not sufficient to demonstrate that the area is a local community, neighborhood, or rural district.

Examples of acceptable documentation may include:

- The defined political jurisdictions;
- Major trade areas (shopping patterns and traffic flows);
- Shared/common facilities (for example, educational, medical, police and fire protection, school district, water, *etc.*);
- Organizations and clubs within the community area;
- Newspapers or other periodicals published for and about the area;
- Maps designating the area to be served. One map must be a regional or state map with the proposed community outlined. The other map must outline the proposed community and the identifying geographic characteristics of the surrounding areas;
- Common characteristics and background of residents (for example, income, religious beliefs, primary ethnic groups, similarity of occupations, household types, primary age group, *etc.*); or
- Other documentation that demonstrates that the area is a community where individuals have common interests or interact.

A community credit union is frequently more susceptible to competition from other local financial institutions and generally does not have substantial support from any single sponsoring company or association. As a result, a community credit union will often encounter financial and operational factors

that differ from an occupational or associational charter. Its diverse membership may require special marketing programs targeted to different segments of the community. For example, the lack of payroll deduction creates special challenges in the development of savings promotional programs and in the collection of loans.

Accordingly, it is essential for the proposed community credit union to develop a detailed and practical business and marketing plan for at least the first two years of operation. The proposed credit union must not only address the documentation requirements set forth in Chapter 1, but also focus on the accomplishment of the unique financial and operational factors of a community charter.

An existing community credit union, and any applicant for a community charter must also specifically address in its business plan, marketing plan or other appropriate separate documentation how the credit union plans to market its products and services to the entire community, including any underserved or low-income areas, if applicable. This may include current or future delivery systems, such as ATMs, 24 hour voice response system, internet web sites, current or future customized programs to assist community residents such as credit counseling and budgeting, and current or future service facility locations. The community credit union will be expected to review its plan to serve the entire community to determine if the community is being adequately served. The regional director may request periodic service status reports from a community credit union to ensure that the needs of the community are being met.

22. In IRPS 99–1, Chapter 3, Section III is revised to read as follows:

All federal credit unions may include in their fields of membership, without regard to location, communities satisfying the definition for serving underserved areas in the Federal Credit Union Act. More than one federal credit union can serve the same underserved area. The Federal Credit Union Act defines an underserved area as a local community, neighborhood, or rural district that is an ''investment area'' as defined in Section 103(16) of the Community Development Banking and Financial Institutions Act of 1994.

The ''well-defined local community, neighborhood, or rural district'' requirement will be met if (1) the area to be served is in a recognized single political jurisdiction, *i.e.*, a county or its political equivalent or any contiguous political subdivisions contained therein, and if the population of the requested well-defined area does not exceed 300,000 or (2) the area to be served is in multiple contiguous political jurisdictions, *i.e.*, a county or its political equivalent or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 200,000. If the proposed area meets either of these criteria and meets the definition of an investment area that is underserved, then it is presumed to be a local community, neighborhood, or rural district.

An investment area includes any of the following:

- An area encompassed or located in an Empowerment Zone or Enterprise Community designated under section 1391 or the Internal Revenue Code of 1996 (26 U.S.C. 1391);
- An area where the percentage of the population living in poverty is at least 20 percent;
- An area in a Metropolitan Area where the median family income is at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater;
- An area outside of a Metropolitan Area, where the median family income is at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater;
- An area where the unemployment rate is at least 1.5 times the national average;
- An area where the percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) is at least 20 percent;
- An area located outside of a Metropolitan Area with a county population loss between 1980 and 1990 of at least 10 percent;

In addition, the local community, neighborhood, or rural district must be underserved, based on data considered by the NCUA Board and the Federal banking agencies.

Once an underserved area has been added to a federal credit union's field of membership, the credit union must establish and maintain an office or facility in the community within two years. A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted and loans are disbursed. This definition includes a credit union owned branch, a shared branch, a mobile branch, an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. This definition does not include an ATM.

If a credit union has a preexisting office within close proximity to the underserved area, then it will not be required to maintain an office or facility within the underserved area. Close proximity will be determined on a case-by-case basis, but the office must be readily accessible to the residents and the distance from the underserved area will not be an impediment to a majority of the residents to transact credit union business.

The federal credit union adding the underserved community must document that the community meets the definition for serving underserved areas in the Federal Credit Union Act. The charter type of a federal credit union adding such a community will not change and therefore the credit union will not be able to receive the benefits afforded to low-income designated credit unions, such as expanded use of non member deposits and access to the Community Development Revolving Loan Program for Credit Unions.

A federal credit union that desires to include an underserved community in its field of membership must first develop a business plan specifying how it will serve the community. The business plan, at a minimum, must identify the credit and depository needs of the community and detail how the credit union plans to serve those needs. The credit union will be expected to regularly review the business plan, to determine if the community is being adequately served. The regional director may require periodic service status reports from a credit union about the underserved area to ensure that the needs of the underserved area are being met as well as requiring such reports before NCUA allows a federal credit union to add an additional underserved area.

23. In IRPS 99–1, Chapter 4, Section II is revised to read as follows:

Any state-chartered credit union may apply to convert to a federal credit union. In order to do so it must:

- Comply with state law regarding conversion;
- File proof of compliance with NCUA;
- File the required conversion application, proposed federal credit union organization certificate, and other documents with NCUA;
- Comply with the requirements of the Federal Credit Union Act, *e.g.*, chartering and reserve requirements; and
- Be granted federal share insurance by NCUA.

Conversions are treated the same as any initial application for a federal charter, including mandatory on-site examination by NCUA. NCUA will also consult with the appropriate state authority regarding the credit union's current financial condition, management expertise, and past performance. Since the applicant in a conversion is an ongoing credit union, the economic advisability of granting a charter is more readily determinable than in the case of an initial charter applicant.

A converting state credit union's field of membership must conform to NCUA's chartering policy. The field of membership will be phrased in accordance with NCUA chartering policy. Subsequent changes must conform to NCUA chartering policy in effect at that time. The converting credit union may continue to serve members of record.

If the converting credit union is a multiple group charter and the new federal charter is a multiple group, then the new federal charter may retain in its field of membership any group that the state credit union was serving at the time of conversion. Any subsequent additions or amendments to the credit union's field of membership must comply with federal field of membership policies.

If the converting credit union is a community charter and the new federal charter is community-based, it must meet the community field of membership requirements set forth in Chapter 2, Section V. If the state chartered credit union's community boundary is more expansive than the approved federal boundary, only members of record outside of the new community boundary may continue to be served.

24. In IRPS 99–1, Chapter 4, Section III.A is revised to read as follows:

Any federal credit union may apply to convert to a state credit union. In order to do so, it must:

- Notify NCUA prior to commencing the process to convert to a state charter and state the reason(s) for the conversion;
- Comply with the requirements of Section 125 of the Federal Credit Union Act that enable it to convert to a state credit union and to cease being a federal credit union; and
- Comply with applicable state law and the requirements of the state regulator.

It is important that the credit union provide an accurate disclosure of the reasons for the conversion. These reasons should be stated in specific terms, not as generalities. The federal credit union converting to a state charter remains responsible for the entire operating fee for the year in which it converts.

25. In IRPS 99–1, Chapter 2, the title of Sections II.H, III.H, and IV.F is revised to read as ''Other Persons Eligible for Credit Union Membership.''

26. In IRPS 99–1, Appendix D, Form 4015EZ is revised to read as follows:

Application for Field of Membership Amendment NCUA Form 4015–EZ

Use Only for Expansions Covering Groups of 500 Persons or Less

Attach a separate application for each group included in your request for expansion. The application must be complete or it will be returned unprocessed.

1. Name and address of credit union:

_____

_____

_____

2. Name and address of group:

_____

_____

_____

(If the group is an association, include a copy of the association's Charter/Bylaws or other equivalent organizational documentation.)

3. Provide the proposed field of membership wording:

_____

_____

_____

4. How many primary potential members (excluding immediate family and household members) are in the group:

_____

5. Attach a letter, on letterhead stationery if possible, from the group requesting credit union service. This letter must indicate:

☐ how the group shares the occupational or associational common bond (for single common bond additions only);

☐ that the group wants to be added to the federal credit union's field of membership;

☐ the number of persons to be added and the group's location(s); and

☐ the group's proximity to the credit union's nearest service facility (for multiple common bond additions only).

Name and title of credit union board-authorized representative (*e.g.,* President/CEO):

_____

(Typed/Printed Name)

_____

(Signature)

_____

(Date)

27. In IRPS 99–1, Appendix D, Form 4015 is revised to read as follows:

Application for Field of Membership Amendment NCUA Form 4015

Use Only for Expansions Covering Groups of More Than 500 Persons

For expansions covering groups of 500 or less persons—use the *short form application, NCUA 4015–EZ.*

Attach a separate application for each group included in your request for expansion. The application must be complete or it will be returned unprocessed.

1. Name and address of credit union:

_____

_____

_____

2. Name and address of the group:

_____

_____

(If the group is an association, include a copy of the association's Charter/Bylaws or other equivalent organizational documentation.)

3. Provide the proposed field of membership wording. Use the example wording found in NCUA's *Chartering and Field of Membership Manual, Chapter 2:*

☐ Section II.A for single occupational common bond groups;

☐ Section III.A for single associational common bond groups; or

Section IV.A for multiple common bond fields of membership.

4. How many primary potential members (excluding immediate family and household members) are in the group:

_____

5. (a) For multiple common bond expansions, what is the distance between the group's location and your credit union's nearest service facility [1] to which the group has access (Reference Chapter 2, Section IV.A.1):

_____

_____

(b) What is the address of this service facility:

_____

_____

_____

(c) Describe the service area [2] primarily served by the above service facility:

_____

_____

_____

_____

6. Is the group in the field of membership of *any* other credit union? Yes____ No____ If yes, and the overlapped credit union is not a community credit union or a non-federally insured credit union, please address the following:

☐ Provide the name and location of the other servicing credit union:

_____

_____

_____

☐ Include a letter from the overlapped credit union indicating whether it concurs or objects to the overlap. If the overlapped credit union objects or fails to respond, document attempts to resolve the issue:

_____

_____

☐ Explain how the expansion's beneficial effect in meeting the convenience and needs of the members of the group clearly outweighs any adverse effect on the overlapped credit union:

_____

_____

7. Attach a letter, on letterhead stationery if possible, from the group requesting credit union service. This letter must indicate:

☐ how the group shares the occupational or associational common bond (for single common bond additions only);

☐ that the group wants to be added to the federal credit union's field of membership;

☐ whether the group presently has other credit union service available;

☐ the number of persons currently included within the group to be added and the group's location(s);

☐ the group's proximity to the credit union's nearest service facility (for multiple common bond additions only); and

☐ why the formation of a separate credit union for the group is not practical or consistent with safety and soundness standards (for multiple common bond additions only). The formation of a separate credit union may not be practical if the group lacks sufficient volunteers or resources to support the operation of a credit union or does not meet the economic advisability criteria outlined in Chapter 1 of NCUA's Chartering and Field of Membership Manual.

8. Other comments:

_____

_____

_____

_____

_____

_____

Name and title of credit union board-authorized representative (*e.g.,* President/CEO):

_____

(Typed/Printed Name)

_____

(Signature)

_____

(Date)

[1] A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted, and loans are disbursed.

[2] A federal credit union's service area is the area that can reasonably be served by the service facility accessible to the groups within the field of membership. It will most often coincide with that geographic area primarily served by the service facility.

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Federal Register

Friday,
October 27, 2000

Part IV

Office of Personnel Management

5 CFR Part 870

Federal Employees' Group Life Program: Miscellaneous Changes and Clarifications and Plain Language Rewrite; Proposed Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 870

RIN 3206–AG63

Federal Employees' Group Life Insurance Program: Miscellaneous Changes and Clarifications and Plain Language Rewrite

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing a complete rewrite of the Federal Employees' Group Life Insurance (FEGLI) regulations. We are changing the format of the regulations and using plain language to make the regulations easier to understand. We are also proposing some miscellaneous changes, clarifications, and corrections, which are spelled out in the Supplementary Information.

DATES: OPM must receive comments on or before December 26, 2000.

ADDRESSES: Send written comments to Abby L. Block, Chief, Insurance Policy and Information Division, Office of Insurance Programs, Retirement and Insurance Service, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–3666; or deliver to OPM, Room 3425, 1900 E Street NW., Washington, DC; or FAX to (202) 606–0633.

FOR FURTHER INFORMATION CONTACT: Karen Leibach, (202) 606–0004.

SUPPLEMENTARY INFORMATION: In line with the President's Memorandum of June 1, 1998 (Plain Language in Government Writing), the Office of Personnel Management (OPM) is rewriting the Federal Employees' Group Life Insurance (FEGLI) regulations. We are writing most of the sections in question and answer format, using tables, and addressing the regulations to the intended reader (usually the insured or eligible individual). We are also using simpler language as much as possible. The purpose is to make the regulations easier to understand.

These regulations also propose various changes, clarifications, and corrections. These are:

Changes

(1) We recognize that sometimes there are situations in which a terminally ill person is not able to elect a living benefit. In consideration of these individuals, we are changing subpart K to allow someone to elect a living benefit on behalf of an insured individual in certain circumstances. The requirements are that the insured person must be physically or mentally incapable of making the election; the applicant must have a power of attorney or court order that would allow him/her to make such an election; and the applicant must either be the sole beneficiary or have the written and signed consent of each beneficiary.

(2) There are occasional situations in which a person's employment may be creditable under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, but may not give the person eligibility for FEGLI. For determining whether an employee is eligible to continue FEGLI as an annuitant or compensationer, we are changing the definition of ''service'' to mean service during which the employee is eligible for FEGLI.

(3) We are removing the exclusion for employees whose annual pay is $12 per year or less, since it's a rather outdated provision. It's not very likely that there are any employees this would apply to. Any employee earning a salary of $12 or less per year is probably already excluded under other provisions.

(4) We are adding information to the regulations about the circumstances allowing family members to convert Option C coverage. Family members may convert Option C if the insured employee/annuitant/compensationer dies, or if the insurance terminates and the insured individual doesn't convert the coverage. Family members may not convert if they lose eligibility as covered family members.

(5) We are changing the regulations to simplify what happens when an employee transfers from a covered position to an excluded position. Currently, some such transfers allow the employee to keep FEGLI coverage, some cause him/her to lose the coverage, and one allows the employee to keep coverage if he/she expects to return to the covered position. The new regulations will allow all employees to keep their FEGLI coverage, if they transfer to a position excluded by regulation with a break in service of not more than 3 days. This does not apply to positions excluded by law.

(6) We are expanding the regulations to include a list of medical conditions that automatically allow a child age 22 and over to be covered under Option C coverage. These are the same conditions that allow an overage dependent to be covered under a self and family enrollment under the Federal Employees Health Benefits (FEHB) Program.

(7) The current regulations state that under Full Reduction, Option B and Option C coverage terminates at 12:00 noon on the day before the 50th reduction. We are changing this to the end of the last day of the month in which the 49th reduction occurs. This allows for a full day of coverage on the last day before the coverage ends.

(8) When reemployed annuitants separate, they may keep the insurance they got through reemployment if they qualify for a supplemental annuity or receive a new retirement right. However, some retirement systems don't allow their annuitants to get a supplemental annuity or new retirement right. To be fair to these annuitants, we are revising the regulations to allow them to keep their reemployment-acquired insurance if they would otherwise qualify for a supplemental annuity or new retirement right—but are unable to receive it due to the provisions of their retirement system.

(9) The regulations currently state that a child qualifies as a recognized natural child if a court determines that the insured person is the child's father, and the court makes that determination before the man dies. We are expanding the regulations to allow a court determination of paternity based on the results of DNA testing both before and after the death of the insured.

(10) The regulations currently include information on reemployed annuitants. We have expanded the regulations to include information on reemployed compensationers.

(11) Current regulations require that an employee who is retiring or becoming insured as a compensationer must choose the number of multiples of Option B and Option C he/she wants to continue into retirement. Any multiples not continued cancel, and the employee does not get the 31-day extension of coverage or right to convert. Since some employees may wish to convert their insurance, instead of continuing it into retirement or compensation, we are changing the regulations to say that any multiples not continued terminate, rather than cancel. This will give the employee the 31-day extension of coverage and the right to convert.

(12) We are changing the time frames for conversion and portability to make them the same. Currently the time frame for conversion is a postmark within 31 days from the date of the terminating event or 31 days from the date the employee or assignee receives the notice of loss of group coverage and right to convert, whichever is later. The individual may also request conversion within 6 months after becoming eligible, if he/she was unable to do so on time because of reasons beyond his/her control. The current time frame for

portability is a request within 60 days from the date of the terminating event. We are making the time frame the same for both conversion and portability. OFEGLI (for conversion) or the Portability Office (for portability) must receive a request within 65 days from the date of the terminating event, with the 6-month ''reasons beyond control'' provision for both. We are also changing the regulations to state that an individual who wants to port Option B must submit the request to the Portability Office; currently the individual must send the request to both the employing office and the Portability Office.

(13) If a disability annuitant's annuity stops because he/she recovers or returns to earning capacity, or if a compensationer's compensation stops because the Department of Labor finds that he/she is able to return to work, the individual's FEGLI stops. Current regulations state that the person does not receive the 31-day extension of coverage or right to convert. We are changing the regulations to allow these individuals to have the 31-day extension and the opportunity to convert their coverage.

(14) Current regulations spell out pay and duty status requirements before open season elections become effective. We are removing the specific requirements and stating that we will announce the requirements for a particular open season in a **Federal Register** notice. This gives us the flexibility to vary the requirements with the needs of each open season.

Clarifications

(1) We are clarifying the regulations to state that a faxed designation of beneficiary is acceptable in certain circumstances. The appropriate office must receive the faxed designation before the insured person dies, and the office must receive the original designation within 30 days of when it received the faxed version. The original must be identical to the faxed copy.

(2) We are stating in the regulations that a witness to an assignment must be someone other than the assignee.

(3) A witness to a designation cannot be named as a beneficiary. We are revising the regulations to show what happens if an agency or retirement system erroneously accepts such a designation. The witness/beneficiary is disqualified from receiving benefits. If that person is the only beneficiary listed, the designation is not valid. Benefits will then be paid according to the last designation on file; if there is none, benefits will go to whoever is next under the order of precedence. If the designation lists another beneficiary or beneficiaries, they will get the disqualified person's share.

(4) At the time of retirement or becoming insured as a compensationer, an employee must make an election for post-65 reduction of Basic insurance. We are making it clear that if a person doesn't make this election, he/she automatically gets 75% Reduction.

(5) We are clarifying the regulations to state that only the insured person (or the assignee) has the right to convert when insurance terminates. No one may convert on behalf of the insured person. (There is an exception that allows family members to convert Option C coverage in certain circumstances. We discussed this previously in item (4) under Changes.) We are also making it clear that only the employee may elect Optional insurance and make the initial post-65 reduction election for Basic, Option B, and Option C. No one may make such an election on behalf of the employee. And we are making it clear that only the insured person (or the assignee) can cancel FEGLI. No one may cancel insurance on behalf of the insured person.

(6) We have changed ''change in family circumstances'' to ''life event.'' This is a simpler phrase and is consistent with more common usage. We have also changed ''open enrollment period'' to ''open season'' for the same reasons. This doesn't mean that FEGLI open seasons will become annual events, as FEHB open seasons are. FEGLI open seasons will remain occasional events, as scheduled by OPM.

(7) Acquiring an eligible child is a life event that allows an employee to make an Option B and/or Option C election. We are clarifying the regulations to state that the definition of child for life events purposes is the same as the definition of child as an eligible family member.

(8) We are expanding the definitions section to include definitions of ''accidental death and dismemberment,'' ''beneficiary,'' ''cancellation,'' ''days,'' ''living benefits,'' ''port'' and ''ported coverage,'' ''separation,'' ''termination,'' and ''we.''

(9) If an insured person cancels his/her insurance, the insurance stops at the end of the pay period in which the person files the waiver. We are clarifying the regulations to say that this is the end of the last day of that pay period.

(10) We are dropping the phrase ''if not already an even thousand'' from the requirement for rounding annual pay to determine the amount of Option B coverage. If the salary is already an even thousand, there is no need to round; so the phrase is unnecessary.

(11) We are clarifying the regulations to state that, even though there is no longer a maximum on the amount of Basic insurance and Option B, if an employee's salary is ''capped'' by law, the Basic and Option B FEGLI amounts are based on the capped salary (the amount the employee is actually being paid), not the amount the salary would be without the cap.

(12) There are no waivers of the ''5-year/all-opportunity'' requirements for continuing FEGLI as an annuitant or compensationer. We are clarifying the regulations to state this.

Corrections

(1) We are correcting the regulations to reflect that accidental death and dismemberment benefits apply to loss of sight, not just to loss of an eye.

(2) Employees who have an interim appointment under § 772.102 of this chapter are eligible for coverage unless their position is excluded by law. This provision was inadvertently removed from the regulations.

(3) We are correcting the regulations concerning how long FEGLI continues for persons covered under the hostage provisions (subpart J). For hostages in Iraq and Kuwait, coverage terminates 12 months after hostage status ends. For hostages captured in Lebanon, coverage terminates 60 months after hostage status ends.

(4) We are correcting § 870.103 to show that OPM has the authority to correct administrative errors. The word ''administrative'' was inadvertently removed from the regulations.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, because the regulation only affects life insurance benefits of Federal employees and retirees.

List of Subjects in 5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement.

Office of Personnel Management.

Janice R. Lachance,

Director.

OPM is proposing to amend 5 CFR part 870 as follows:

Part 870 is revised to read as follows:

PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

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870.103 Who can correct an error in my coverage?
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870.202 What is my Basic insurance amount (BIA)?
870.203 Does my BIA ever change?
870.204 Is the BIA the amount my survivors will receive when I die?
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870.207 What is included in my annual pay?
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870.209 What is the amount of my Optional insurance?
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870.504 Are there any extensions to the 31-day time limit for electing Optional insurance?
870.505 Can I cancel my insurance?
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870.507 How can I cancel my waiver and get insurance?
870.508 How do I cancel my waiver by getting a physical exam?
870.509 What happens after OFEGLI makes its decision?
870.510 What is a life event?
870.511 How do I cancel my waiver if I have a life event?
870.512 When can I make a life event election?
870.513 How many multiples of Options B and C can I elect due to a life event?
870.514 When does my Option B and Option C life event coverage become effective?
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870.517 What coverage can I elect during an open season?
870.518 What is the effective date for open season elections?
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870.705 Are these the amounts that will be paid when I die or if a family member dies?
870.706 What kind of election can I make about reductions in my Basic insurance?
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870.709 When do I have to make the post-65 reduction election for Option B and Option C?
870.710 What if I was already retired or insured as a compensationer on April 24, 1999?
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870.712 Do the post-65 reductions apply to all annuitants and compensationers?
870.713 What if I'm an MRA+10 annuitant?
870.714 What if I don't want to continue my insurance as an annuitant or compensationer?
870.715 When does my insurance as an annuitant or compensationer stop?
870.716 Can my insurance be reinstated?
870.717 What happens if I retire and then come back to work for the Federal Government?
870.718 Can I elect more life insurance if I return to service?
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870.720 What happens when I separate from service again?
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870.916 Current addresses.

Subpart J—Benefits for United States Hostages in Iraq and Kuwait and United States Hostages Captured in Lebanon

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870.1002 Special definitions for this subpart.
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870.1004 What is the amount of insurance for those eligible as hostages?
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Authority: 5 U.S.C. 8716; subpart J also issued under section 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 870.302(a)(3)(ii) also issued under section 153 of Pub. L. 104–134, 110 Stat. 1321; § 870.302(a)(3) also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251 and section 7(e) of Pub. L. 105–274, 112 Stat. 2419.

Subpart A—Administration and General Provisions

§ 870.101 Definitions.

Accidental death and dismemberment means death or bodily injury caused solely through violent, external, and accidental means. This has meaning for FEGLI if, as a direct result of the bodily injuries, independent of all other causes, you die or lose your hand, foot, or eyesight within 90 days of the accidental injury. If your physical or mental condition or treatment for your physical or mental condition contributes to your death or dismemberment, we do not consider your injury to be accidental.

Annuitant means a former employee who is entitled to an annuity (pension) under a retirement system established for employees. This includes the retirement system of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard.

Assign and *assignment* mean the insured individual's transfer of ownership of the FEGLI coverage to another individual, corporation, trust, or other entity. An assignment is irrevocable (permanent—it cannot be undone) and includes all FEGLI coverage, except Option C.

Assignee means the individual, corporation, trust, or other entity to whom an insured individual irrevocably transfers ownership of FEGLI coverage (except Option C).

Beneficiary means the individual, corporation, trust, or other entity that receives FEGLI benefits when you die.

Cancellation means FEGLI stops. We consider it to be a voluntary action. The insured individual does not get a temporary extension of coverage or right to convert. Reducing the number of multiples of Option B or Option C is a cancellation of those multiples.

Child (a)—as used in the definition of *family member* for Option C coverage and as used with life events—means the following:

(1) A legitimate child;

(2) An adopted child;

(3) A stepchild or foster child who lives with the employee or former employee in a regular parent-child relationship; or

(4) A recognized natural child.

(b) This definition does not include a stillborn child or a grandchild (unless the grandchild meets all the requirements of a foster child).

(c) The child must be under age 22. A child age 22 or over is eligible if the child is incapable of self-support because of a physical or mental disability which existed before the child reached age 22.

Child (a)—as used in the order of precedence for payment of benefits—means the following:

(1) A legitimate child;

(2) An adopted child; or

(3) A recognized natural child.

(b) The child may be of any age.

(c) This definition does not include the following:

(1) A stepchild;

(2) A stillborn child;

(3) A grandchild; or

(4) A foster child.

(d) Adopted children inherit from their adoptive parents under the order of precedence, not from their birth parents (unless they are designated beneficiaries).

(e) A child who has reached age 18 is considered an adult and can receive a benefit payment in his/her name. But if the age of adulthood where the individual has legal residence is set at a lower age, the child is considered an adult on reaching that lower age.

Compensation means compensation under subchapter I of chapter 81 of title 5, United States Code, which is payable because of an on-the-job injury or disease.

Compensationer means an individual who is receiving compensation and who the Department of Labor determines is unable to return to duty.

Court order (a) means one of the following:

(1) A court decree of divorce, annulment, or legal separation; or

(2) A court-approved property settlement agreement relating to a court decree of divorce, annulment, or legal separation.

(b) A court order has meaning for FEGLI if it requires FEGLI benefits to be paid to a specific person or persons.

Date of retirement means the commencing (starting) date of the annuity.

Days means calendar days.

Dependent means living with or receiving regular and substantial support from the insured individual.

Employee means an individual who meets the definition of section 8701(a) of title 5, United States Code.

Employing office means the agency office or retirement system office that has responsibility for life insurance actions.

(a) The Administrative Office of the United States Courts is the employing office for judges of the following courts:

(1) All United States Courts of Appeals;

(2) All United States District Courts;
(3) The Court of International Trade;
(4) The Court of Federal Claims; and
(5) The District Courts of Guam, the Northern Mariana Islands, and the Virgin Islands.

(b) The Washington Headquarters Services is the employing office for judges of the United States Court of Appeals for the Armed Forces.

(c) The United States Tax Court is the employing office for judges of the United States Tax Court.

(d) The United States Court of Veterans Appeals is the employing office for judges of the United States Court of Veterans Appeals.

Family member means a spouse (including a valid common law marriage) and unmarried dependent child(ren).

Immediate annuity means:

(a) An annuity that begins no later than 1 month after the date the insurance would otherwise stop (the date of separation from service); or

(b) An annuity under § 842.204(a)(1) of this chapter for which the starting date has been postponed under § 842.204(c) of this title (called an MRA+10 annuity).

Judge means an individual appointed as a Federal justice or judge under Article I or Article III of the Constitution.

Living benefits means life insurance benefits that are paid to an insured person while the person is living.

OFEGLI means the Office of Federal Employees' Group Life Insurance, which pays benefits under the FEGLI contract.

OPM means the Office of Personnel Management.

OWCP means the Office of Workers' Compensation Programs, U.S. Department of Labor.

Parent means the mother or father of a legitimate child or an adopted child. The term *parent* includes the mother of a recognized natural child. It also includes the father of a recognized natural child, if the child meets the definition of *recognized natural child.*

Port and *ported coverage* mean continuing FEGLI group coverage that would otherwise terminate.

Portability Office means the office OPM designates to manage ported coverage and to collect premiums for ported coverage.

Recognized natural child means a biological child born outside of marriage. An insured individual is considered to be the father of such a child under the following conditions:

(a)(1) The man acknowledges paternity in writing;

(2) A court orders the man to provide support;

(3) Before the man dies, a court pronounces him to be the father (if the court bases its determination on the results of DNA testing, it is also acceptable after the man dies);

(4) The man names himself as the father of the child on a certified copy of the public record of birth or church record of baptism; or

(5) Public records, such as records of schools or social welfare agencies, show that—with his knowledge—the insured is named as the father of the child.

(b) If paragraph (a) of this definition does not establish paternity, OFEGLI may consider other proof to establish paternity. This includes evidence of the child's eligibility as a recognized natural child under other State or Federal programs or proof that the insured included the child as a dependent on his income tax returns.

Reconsideration means the final level of administrative review of an employing office's initial decision. The purpose of a reconsideration is to determine if the employing office followed the law and regulations correctly in making the initial decision concerning FEGLI eligibility and coverage.

Regular parent-child relationship means that the employee or former employee is exercising parental authority, responsibility, and control over the child. The employee or former employee is caring for, supporting, and disciplining the child and is making the decisions about the child's education and medical care.

Separation means leaving Federal service, either by resignation or by retirement.

Service means Federal civilian service that is creditable under subchapter III of chapter 83 or chapter 84 of title 5, United States Code. For the purpose of continuing FEGLI as an annuitant or compensationer, it means service during which an employee is eligible to be covered under FEGLI. This includes service under a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard for an individual who elected to remain under a retirement system established for employees described in section 2105(c) of title 5 U.S.C.

Terminally ill means having a medical prognosis of a life expectancy of 9 months or less.

Termination means FEGLI stops. We consider it to be an involuntary action. The insured individual gets a temporary extension of coverage and right to convert.

Underdeduction means not withholding the required amount of life insurance deductions from an individual's pay, annuity, or compensation. This includes nondeductions (when none of the required amount is withheld) and partial deductions (when only part of the required amount is withheld).

We means OPM (the Office of Personnel Management).

§ 870.102 How is FEGLI set up?

The Federal Employees' Group Life Insurance (FEGLI) Program is authorized by law (chapter 87 of title 5, United States Code). The Office of Personnel Management (OPM) administers the Program and sets the premiums. OPM has a contract with an insurance company to provide group life insurance coverage for Federal employees under the FEGLI Program. The company has an office called OFEGLI (the Office of Federal Employees' Group Life Insurance) to pay benefits.

§ 870.103 Who can correct an error in my coverage?

(a) Your employing office may correct administrative errors about your coverage or changes in coverage. If the correction is retroactive, your employing office must follow the provisions of § 870.408.

(b) OPM may order correction of an administrative error if we have evidence that it would be against equity (fairness) and good conscience not to order the correction.

§ 870.104 What if I get coverage by mistake?

(a) If you become insured in error, your coverage will remain in effect if at least 2 years pass before the error is discovered and you paid the applicable premiums during that time. This applies to errors discovered on or after October 30, 1998.

(b) If you are allowed to continue your insurance into retirement or compensation in error, your coverage will remain in effect if at least 2 years pass before the error is discovered and you paid the applicable premiums during that time. This applies to such errors discovered on or after October 30, 1998.

(c) If you are allowed to keep erroneous coverage because of this provision, but you don't want the coverage, you may cancel the coverage on a prospective basis. You will not get a refund of your premiums.

§ 870.105 What if I think my agency or retirement system made the wrong decision about my coverage?

(a) You may ask your agency or retirement system to reconsider its initial decision denying you life

insurance coverage, the opportunity to change your coverage, the opportunity to designate a beneficiary, or the opportunity to assign your insurance.

(b) Your employing office's decision is an initial decision when the employing office gives it to you in writing and tells you about the right to a reconsideration.

(c) If you want a reconsideration, you must make your request in writing and follow the instructions in the initial decision notice. Your request must include the following:

(1) Your name;

(2) Your address;

(3) Your date of birth;

(4) Your Social Security number;

(5) The reason(s) for your reconsideration request;

(6) A copy of the initial decision; and

(7) If you are retired, your retirement claim number.

§ 870.106 How long do I have to request a reconsideration?

You must request a reconsideration within 30 days from the date of the initial decision.

§ 870.107 Can I get an extension of this time limit?

Yes. To get an extension you must show either:

(a) That your employing office did not notify you of the time limit and you were not aware of it by any other means; or

(b) That you were not able to make the request on time because of reasons beyond your control.

§ 870.108 Who does the reconsideration?

(a) Your agency or retirement system performs the reconsideration. They must do so at or above the level where they made the initial decision.

(b) After performing the reconsideration, the agency or retirement system must issue a final decision. The agency or retirement system must give you the final decision in writing and must state the findings fully.

§ 870.109 What if someone thinks OFEGLI paid benefits incorrectly?

(a) If you (or your beneficiaries) think OFEGLI made an error in paying benefits, you must contact OFEGLI directly.

(b) If you (or your beneficiaries) think you are due money from FEGLI benefits and that you need to go to court to get the money, you must take court action against the company that we contract with, not against OPM.

§ 870.110 Special information for census workers.

If you are a Federal employee, whether in pay status or nonpay status, and you are hired for a temporary, intermittent, position with the decennial (every 10 years) census, your census employment has no effect on:

(a) The amount of your Basic or Option B insurance;

(b) The withholdings or Government contribution for your insurance; or

(c) The determination of when 12 months in nonpay status ends.

Subpart B—Types and Amounts of Insurance

§ 870.201 What types of insurance does the FEGLI Program have?

(a) The FEGLI Program has 2 types of life insurance: Basic and Optional.

(b) There are 3 types of Optional insurance: Option A (standard optional insurance), Option B (additional optional insurance), and Option C (family optional insurance).

§ 870.202 What is my Basic insurance amount (BIA)?

(a)(1) Unless you elected a living benefit under subpart K of this part, if you are an employee, your Basic insurance amount (BIA) is the higher of:

(i) Your annual rate of basic pay, rounded to the next higher thousand, plus $2,000; or

(ii) $10,000. *Note:* If your pay is ''capped'' by law, the amount of your Basic insurance is based on the capped amount, the amount you are actually being paid. It is *not* based on the amount your pay would be without the cap.

(2) If you elected a living benefit, see § 870.205.

(3) Effective for pay periods beginning on or after October 30, 1998, there is no maximum BIA.

(b) If you are eligible to continue your Basic insurance coverage as an annuitant or compensationer, your BIA is the BIA that is in effect at the time your insurance as an employee would stop under § 870.601.

§ 870.203 Does my BIA ever change?

(a) If you are an employee, your BIA automatically changes whenever your annual pay increases or decreases enough to move you to a different $1,000 bracket, unless you elected a living benefit under subpart K of this part. (If that applies to you, see § 870.205.)

(b) If you are insured as an annuitant or compensationer, your BIA will not change.

§ 870.204 Is the BIA the amount my survivors will receive when I die?

(a) Your BIA is the starting point for determining the amount that OFEGLI will pay when you die.

(b) If you are under age 45 when you die, your beneficiaries will receive a higher amount. This is called an ''extra benefit.'' OFEGLI multiplies your BIA by a factor, depending on your age at the time of your death. These are the factors:

Age	Factor
35 or under	2.0
36	1.9
37	1.8
38	1.7
39	1.6
40	1.5
41	1.4
42	1.3
43	1.2
44	1.1
45 or over	1.0

(c) If you are insured as an annuitant or compensationer and are age 65 or over, the amount of benefits paid may be reduced, depending on the election you made. See § 870.706.

(d) Depending on the cause of your death, your beneficiaries also may receive an accidental death benefit. See § 870.212.

§ 870.205 What is the post-election BIA?

(a) The post-election BIA is the amount of Basic insurance left after you elect a living benefit. (See subpart K of this part)

(1) If you elect a full living benefit, the post-election BIA is $0.

(2) If you elect a partial living benefit, you still have some Basic insurance left. OFEGLI determines this amount by taking your BIA on the date OFEGLI receives your completed living benefit application and reducing it by a percentage. This percentage represents the amount of your partial living benefit payment, compared to the amount you could have received if you elected a full living benefit. The amount that is left is rounded up or down to the nearest multiple of $1,000. (If it's midway between multiples, it is rounded up to the next higher multiple.)

(b) The post-election BIA cannot change, so changes in pay will have no effect on it.

(c) If you elect a partial living benefit and are under age 45 when you die, OFEGLI will multiply your post-election BIA by the ''extra benefit'' factor that was in effect on the date OFEGLI received your completed living benefit application.

§ 870.206 What do you mean by my annual rate of pay?

Your annual pay is your annual rate of basic pay as fixed by law or regulation.

§ 870.207 What is included in my annual pay?

Your annual pay includes the following:

(a) Interim geographic adjustments and locality-based comparability payments, as provided by Pub. L. 101–509 (104 Stat. 1479);

(b) Premium pay for standby duty under 5 U.S.C. 5545(c)(1);

(c) If you are a customs officer, premium pay for overtime inspectional service, as provided by Pub. L. 103–66 (107 Stat. 453);

(d) If you are a law enforcement officer as defined under 5 U.S.C. 8331(20) and §§ 831.902 and 842.802 of this chapter, premium pay for administratively uncontrollable overtime under 5 U.S.C. 5545(c)(2);

(e) If you are a wage employee, night differential pay;

(f) If you are an employee exposed to danger or physical hardship, environmental differential pay;

(g) If you are a citizen employee in Panama, tropical differential pay;

(h) If you are a law enforcement officer, special pay adjustments;

(i) If you are a criminal investigator, availability pay under 5 U.S.C. 5545a;

(j) If you are a physician or dentist of the Department of Veterans Affairs, bonuses as provided by Pub. L. 96–330 (94 Stat. 1030); and

(k) If you are a firefighter, straight-time pay for regular overtime hours, as provided in 5 U.S.C. 5545b and part 550, subpart M, of this chapter.

§ 870.208 What if my pay isn't annual or full-time or regular?

(a) If your pay is not annual, your employing office will convert your pay to an annual rate. The way to do this is to multiply your pay rate by the number of pay units in a 52-week work year.

(b) If you are a part-time employee, your annual pay is your basic pay applied to your tour of duty in a 52-week work year.

(c) If you are on piecework rates, your annual pay is your total basic earnings for the previous calendar year, not counting premium pay for overtime or holidays.

(d) If you have a regular schedule but work at different pay rates, your annual pay is the weighted average of the rates at which you are paid, projected to an annual basis.

(e) If you are a non-Postal intermittent employee or an employee who works at different pay rates without a regular schedule, your annual pay is the annual rate that you are receiving at the end of the pay period.

(f) If you legally serve in more than one position at the same time, and at least one of those positions entitles you to life insurance coverage, your annual pay is the sum of the annual basic pay fixed by law or regulation for each position. *Exception:* This doesn't apply to part-time flexible schedule employees in the Postal Service.

§ 870.209 What is the amount of my Optional insurance?

(a) Option A coverage is $10,000. Effective for pay periods beginning on or after October 30, 1998, Option A cannot be more than $10,000. *Exception:* This does not apply if you retired or became insured as a compensationer with a higher amount of Option A before the removal of the maximum on Basic insurance (the first pay period beginning on or after October 30, 1998).

(b)(1) Option B coverage comes in 1, 2, 3, 4, or 5 multiples of your annual pay (after rounding the pay to the next higher thousand).

Note: If your pay is ''capped'' by law, the amount of your Option B coverage is based on the capped amount, the amount you are actually being paid. It is *not* based on the amount your pay would be without the cap.

(2) Effective for pay periods beginning on or after October 30, 1998, there is no maximum amount for each multiple.

(3) The amount of your Option B coverage automatically changes whenever your annual pay increases or decreases enough to move you to a different $1,000 bracket.

(c) Effective April 24, 1999, Option C coverage comes in 1, 2, 3, 4, or 5 multiples of the following amounts: $5,000 on the death of a spouse and $2,500 on the death of an eligible child.

§ 870.210 Are these the amounts that will be paid when I die or if a family member dies?

(a) The amounts given in § 870.209 are the starting points for determining the amount that OFEGLI will pay when you die or when a covered family member dies.

(b) There is no extra benefit if you or your family member is under age 45 at the time of death.

(c) If you are insured as an annuitant or compensationer and are age 65 or over, the amount of benefits paid for Option A will be reduced. The amount of benefits for Options B and C may also be reduced, depending on the elections you made. See § 870.708.

§ 870.211 Does FEGLI have accidental death and dismemberment benefits?

(a)(1) If you are an employee, you automatically have accidental death and dismemberment (AD&D) benefits with Basic insurance. You also automatically have AD&D benefits with Option A, if you have that coverage.

(2) There are no AD&D benefits with Options B and C.

(b) If you are insured as an annuitant or compensationer, you do not have AD&D benefits.

§ 870.212 What is the amount of my AD&D coverage?

(a) *Accidental death benefit:*

(1) Under Basic insurance, this is equal to your BIA, but without the extra benefit described in § 870.204(b).

(2) Under Option A, this is $10,000.

(b) *The accidental dismemberment benefit* is for the loss of your hand, foot, or vision.

(1) Under Basic insurance, the benefit is equal to one-half your BIA (without the extra benefit). If you lose more than 1 hand or foot or the vision in both eyes in the same accident, the benefit is equal to the whole BIA (without the extra benefit).

(2) Under Option A, the benefit is $5,000. If you lose more than 1 hand or foot or the vision in both eyes in the same accident, the benefit is $10,000.

(c)(1) OFEGLI pays accidental death benefits to your beneficiaries (see subpart H of this part).

(2) OFEGLI pays accidental dismemberment benefits to you.

Subpart C—Eligibility

§ 870.301 Am I eligible for Basic or Optional insurance?

(a) Unless you are in an excluded position, you are eligible for FEGLI coverage.

(b)(1) You get Basic insurance automatically. If you don't want Basic insurance, you have to waive it.

(2) Optional insurance is not automatic. If you want Optional insurance, you must elect it.

(c) You may elect one or more types of Optional insurance if:

(1) You have Basic insurance; and

(2) You do not have a waiver of that type (or types) of Optional insurance still in effect.

§ 870.302 What is an excluded position?

The law excludes some employees from FEGLI coverage, and the regulation excludes some employees. OPM makes the final determination about whether an exclusion applies to a specific employee or group of employees.

§ 870.303 Who is excluded by law?

The law excludes you if you are:

(a) An employee of a corporation supervised by the Farm Credit Administration, if private interests elect or appoint a member of the board of directors.

(b) An employee who is not a citizen or national of the United States and your permanent duty station is outside the United States. *Exception:* You are not excluded if you met the definition of employee on September 30, 1979, by service in an Executive agency, the United States Postal Service, or the Smithsonian Institution in the area that was then known as the Canal Zone.

(c) An individual first employed by the Government of the District of Columbia on or after October 1, 1987. *Exceptions:* You are not excluded if:

(1) You are an employee of St. Elizabeths Hospital, and you went to work for the District of Columbia Government immediately following Federal employment, without any break in service, as provided in section 6 of Pub. L. 98–621 (98 Stat. 3379).

(2) You are an employee of the District of Columbia Financial Responsibility and Management Assistance Authority (Authority). To qualify, you must make an election under section 153 of Pub. L. 104–134 (110 Stat. 1321) to be considered a Federal employee for life insurance and other benefits purposes. If you are an Authority employee who is a former Federal employee, you are subject to the provisions of §§ 870.507, 870.717, and 870.718.

(3) You are the Corrections Trustee or the Pretrial Services, Parole, Adult Probation and Offender Supervision Trustee. You also are not excluded if you are an employee of one of these Trustees, and you went to work for the District of Columbia Government within 3 days after separating from the Federal Government.

(4) Effective October 1, 1997, you are a judicial or nonjudicial employee of the District of Columbia Courts, as provided by Pub. L. 105–33 (111 Stat. 251).

(5) Effective April 1, 1999, you are an employee of the Public Defender Service of the District of Columbia, as provided by Pub. L. 105–274 (112 Stat. 2419).

§ 870.304 Who is excluded by regulation?

OPM excludes you if you are:

(a) Serving under an appointment limited to 1 year or less. *Exceptions:* You are eligible if:

(1) You are an acting postmaster;

(2) You are a Presidential appointee appointed to fill an unexpired term; or

(3) You are an employee with a provisional appointment, as defined in § 316.403 of this chapter.

(b) Employed for an uncertain or purely temporary period. We also exclude you if you are employed for brief periods at intervals, or if you are expected to work fewer than 6 months in each year. *Exception:* You are eligible if you are employed under an OPM-approved career-related work-study program under Schedule B. To qualify, your work-study program must last at least 1 year, and you must be expected to be in pay status for at least one-third of the total period of time from the date of your first appointment to the date you complete the work-study program.

(c) An intermittent employee (a non-full-time employee without a regularly scheduled tour of duty).

(d) A beneficiary or patient employee in a Government hospital or home.

(e) Paid on a contract or fee basis. *Exception:* You are eligible if you are a United States citizen, and you are appointed by a contract between you and the Federal employing authority. To qualify, your contract must require your personal service, and you must be paid on the basis of units of time.

(f) Paid on a piecework basis. *Exception:* You are eligible if your work schedule provides for full-time or part-time service, and you have a regularly scheduled tour of duty.

§ 870.305 Are there any other exceptions to these exclusions?

(a) If you have FEGLI and you transfer to a position excluded by regulation (see § 870.304), your FEGLI continues, unless you have a break in service of more than 3 days. You cannot continue your FEGLI if your position is excluded by law (see § 870.303).

(b) If you have an interim appointment under § 772.102 of this chapter, you are eligible for coverage even if your position is excluded by regulation. You are not eligible for coverage if your position is excluded by law.

§ 870.306 Are foster children eligible as family members under my Option C coverage?

(a) Effective October 30, 1998, foster children are eligible for coverage as family members under Option C.

(b) To qualify for coverage as a foster child, the child must meet the following requirements:

(1) The child must live with you;

(2) The parent-child relationship (as defined in § 870.101) must be with you, not the biological parent;

(3) You must be the primary source of financial support for the child; and

(4) You must expect to raise the child to adulthood.

(c) A child does not qualify as a foster child if:

(1) A welfare or social service agency places the child in your home; and

(2) There is an agreement by which the agency retains control of the child or pays you for maintenance.

(d)(1) If you want to cover a foster child, you must sign a certification stating that the child meets all the requirements. The certification must also state that you will notify your employing office if one of these situations happens:

(i) The child marries;

(ii) The child moves out of your home; or

(iii) The child stops being financially dependent on you.

(2) Your employing office must keep the signed certification in your file, along with other life insurance forms.

(e) If your foster child moves out of your home to live with a biological parent, the child loses eligibility. The child cannot again be covered as a foster child unless:

(1) The biological parent dies;

(2) The biological parent is imprisoned;

(3) The biological parent becomes unable to care for the child due to a disability; or

(4) You get a court order taking parental responsibility away from the biological parent.

§ 870.307 What do I have to do to cover a disabled child over age 22?

(a)(1) A child age 22 or over is an eligible family member if the child is incapable of self-support because of a physical or mental disability that existed before the child reached age 22.

(2) You must provide your employing office with a doctor's certificate about your child's disability. The doctor must sign the certificate, and the certificate must show the doctor's office address. The certificate must state the following:

(i) That your child is incapable of self-support because of a physical or mental disability;

(ii) That the disability started before the child reached age 22; and

(iii) That the disability is expected to continue for more than 1 year. The certificate must also include:

(iv) Your child's name;

(v) The type of disability;

(vi) How long the disability has existed; and

(vii) The disability's expected future course and duration.

(b) If the doctor's certificate shows that your child has one of the following conditions, your child is eligible:

(1) AIDS—CDC classes A3, B3, C1, C2, and C3 (not seropositivity alone);

(2) Advanced muscular dystrophy;

(3) Any malignancy with metastases, or any malignancy that is untreatable;

(4) Chronic hepatic failure;

(5) Chronic neurological disease, whatever the reason, with severe mental retardation or neurological impairment. These diseases include:
(i) Cerebral palsy,
(ii) Encephalopathies,
(iii) Uncontrollable seizure disorder, and
(iv) Ectodermal dysplasia;
(6) Chronic renal failure;
(7) Inborn errors of metabolism with complications, such as the following:
(i) Phenylketonuria,
(ii) Homocysteinuria,
(iii) Primary hyperoxaluria,
(iv) Adrenoleukodystrophy,
(v) Tay-Sachs disease,
(vi) Nieman-Pick disease,
(vii) Gaucher disease,
(viii) Glycogen storage diseases,
(ix) Mucopolysacharide disease, and
(x) Lesch-Nyhan disease;
(8) Mental retardation with IQ of 70 or less;
(9) Osteogenesis imperfecta;
(10) Severe congenital or acquired heart disease with decompensation;
(11) Severe autism;
(12) Severe juvenile rheumatoid arthritis;
(13) Severe mental illness requiring prolonged or repeated hospitalization;
(14) Severe organic mental disorder; or
(15) Xeroderm pigmentosa.

(c) If your child does not have one of the conditions listed in paragraph (b) of this section, your employing office will arrange for a medical review of the doctor's certificate to determine whether your child is eligible.

Subpart D—Cost of Insurance

§ 870.401 Who pays for FEGLI?

(a) You and the Government share the cost of Basic insurance. You pay two-thirds, and the Government pays one-third.

(b) You pay the full cost of Optional insurance. There is no Government contribution for any Optional insurance.

§ 870.402 How much do I have to pay for Basic insurance?

(a)(1) Basic insurance costs $0.1550 biweekly for each $1,000 of your BIA. Your employing office must withhold that amount from your pay for each pay period during which you are in pay status for any part of the time.

(2) If your pay isn't biweekly, your employing office must prorate the amount withheld and adjust it to the nearest one-tenth of 1 cent.

(3) If your BIA changes during the pay period, the amount withheld from your pay is based on your BIA on the last day of the pay period.

(b) There is no cost for the extra benefit described in § 870.205, and there is no cost for AD&D coverage.

§ 870.403 How much do I pay if I'm insured as an annuitant or compensationer?

(a) If you are insured as an annuitant or compensationer, the amount you pay depends on the election you made about the level of reduction you want at age 65 (see § 870.706). Your retirement system withholds your payment from your annuity. OWCP withholds your payment from your compensation.

(b)(1) When you become insured as an annuitant, you pay the following amount for Basic insurance:

Election	Monthly withholding for each $1,000 of your BIA before age 65	Monthly withholding for each $1,000 of of your BIA after age 65
75% Reduction	$0.3358	None—Basic insurance is free.
50% Reduction	0.9258	$0.59.
No Reduction	2.3758	$2.04.

(2) The changes in withholding take place the month after the month in which you turn 65. (If you retired before January 1, 1990, and elected 75% Reduction, you paid no premiums.) For the purpose of this paragraph, if you separate from service after meeting the requirements for an immediate annuity under 5 U.S.C. 8412(g), you are considered to retire on the day before your annuity begins.

(c)(1) When you become insured as a compensationer, you pay the following amount for Basic insurance.

Election	Weekly withholding for each $1,000 of your BIA before age 65	Weekly withholding for each $1,000 of your BIA after age 65
75% Reduction	$0.0775	None—Basic insurance is free.
50% Reduction	0.2175	$0.14.
No Reduction	0.5475	$0.47.

(2) The changes in withholding take place the month after the month in which you turn 65. (If you began receiving compensation before January 1, 1990, and elected 75% Reduction, you paid no premiums.)

§ 870.404 How does the Government contribution for Basic insurance work?

(a)(1) If you are an employee, for each pay period in which you are insured, your employing office must contribute an amount equal to one-half the amount withheld from your pay.

(2) Your agency's contribution must come from the appropriation or fund that is used to pay your salary. If you are an elected official, the Government contribution must come from the appropriation or fund that is available to pay other salaries in the same office.

(b)(1) If you are insured as an annuitant or compensationer, OPM makes the Government contribution. *Exception:* If you are a Postal Service employee who becomes insured as an annuitant or compensationer after December 31, 1989, the Postal Service pays the Government contribution.

(2) The amount OPM must pay is equal to one-half the amount that would be withheld from your annuity or

compensation if you elect 75% Reduction. The amount of the Government contribution is the same whether you elect 75% Reduction, 50% Reduction, or No Reduction.

(3) The Government contribution stops the month after the month in which you turn 65.

§ 870.405 How much do I have to pay for Optional insurance?

(a) The cost of Optional insurance depends on your age.

(b)(1) Your employing office must withhold the full cost of Optional insurance from your pay for each pay period during which you are in pay status for any part of the time.

(2) Unless you are a reemployed annuitant or compensationer (see §§ 870.717 and 870.721), your retirement system must withhold the full cost of Optional insurance from your annuity, and OWCP must withhold the full cost of Optional insurance from your compensation.

(c)(1) The cost for $10,000 of Option A coverage is:

Age	Biweekly cost
If you are under age 35	$0.30
Ages 35 through 39	.40
Ages 40 through 44	.60
Ages 45 through 49	.90
Ages 50 through 54	1.40
Ages 55 through 59	2.70
Ages 60 and over	6.00

(2) If your pay isn't biweekly, your employing office must prorate the amount and adjust it to the nearest cent.

(3) If you are insured as an annuitant or compensationer, your Option A coverage is free, starting the month after the month in which you turn 65.

(d)(1) The cost for each $1,000 of Option B coverage is:

Age	Biweekly cost
If you are under age 35	$0.03
Ages 35 through 39	.04
Ages 40 through 44	.06
Ages 45 through 49	.10
Ages 50 through 54	.15
Ages 55 through 59	.31
Ages 60 and over	.70

(2) If your pay isn't biweekly, your employing office must prorate the amount and adjust it to the nearest one-tenth of 1 cent.

(3) If you are insured as an annuitant or compensationer, whether or not you continue to pay premiums after you turn 65 depends on the election you make. See § 870.708.

(i) If you elect Full Reduction, your Option B coverage is free, starting the month after the month in which you turn 65.

(ii) If you elect No Reduction, you continue to pay the premiums for your age group, as long as you remain insured.

(e)(1) The cost for each multiple of Option C is:

Age	Biweekly cost
If you are under age 35	$0.27
Ages 35 through 39	.34
Ages 40 through 44	.46
Ages 45 through 49	.60
Ages 50 through 54	.90
Ages 55 through 59	1.45
Ages 60 through 64	2.60
Ages 65 through 69	3.00
Ages 70 and over	3.40

(2) If your pay isn't biweekly, your employing office must prorate the amount and adjust it to the nearest cent.

(3) If you are insured as an annuitant or compensationer, whether or not you continue to pay premiums after you turn 65 depends on the election you make. See § 870.708.

(i) If you elect Full Reduction, your Option C coverage is free, starting the month after the month in which you turn 65.

(ii) If you elect No Reduction, you continue to pay the premiums for your age group, as long as you remain insured.

§ 870.406 When I move from one age group to another, when do I start paying the higher premiums?

Effective April 24, 1999, your premium changes the pay period after the one in which you turn 35, 40, 45, 50, 55, or 60, and for Option C, 65, or 70.

§ 870.407 What happens to my withholding if I elect a living benefit?

(a) If you elect a full living benefit, your withholding for Basic insurance and the Government contribution stop at the end of the pay period in which your living benefit election is effective.

(b) If you elect a partial living benefit, your withholding for Basic insurance and the Government contribution are reduced at the end of the pay period in which your living benefit election is effective. The new withholding and contribution amounts are based on the post-election BIA.

(c) If you elect a living benefit, your withholdings for Optional insurance do not change.

§ 870.408 What happens if my employing office doesn't withhold enough?

(a)(1) If your employing office does not make any withholdings, or withholds too low an amount, it must deposit the correct amount into the Employees' Life Insurance Fund within 60 days after it discovers the error. Your employing office must make the deposit regardless of whether or when it recovers the money from you.

(2) If your employing office does not withhold enough, you receive an overpayment of your pay. If this happens, your agency or retirement system must determine whether to collect the money from you or waive collection of the overpayment. The provisions for waiving collection of an overpayment of pay are in 5 U.S.C. 5584, as spelled out in 4 CFR chapter I, subchapter G. If your agency is excluded from these provisions, it may use any applicable authority to waive the collection.

(b) If your employing office does not make the Government contribution for Basic insurance, or makes too low a contribution, it must deposit the correct amount into the Employees' Life Insurance Fund within 60 days after it discovers the error.

§ 870.409 What if my pay is too low to make the withholdings?

(a) Since January 1, 1988, annuitants who retired under 5 U.S.C. chapter 84 (Federal Employees' Retirement System) have been able to make direct premium payments if their annuity became too low to cover the premiums. Effective the first pay period beginning on or after October 30, 1998, all employees, annuitants, and compensationers whose pay, annuity, or compensation is too low to cover the withholdings may make direct premium payments.

(b)(1) You are eligible to make direct premium payments if your employing office determines that your pay, annuity, or compensation, after all other deductions, is expected to be insufficient to cover the withholdings on an ongoing basis, *i.e.*, for the next 6 months or more.

(2) This section does not apply to employees in nonpay status. If you are in nonpay status, see § 870.410(d).

(c)(1) When your employing office determines that your pay, annuity, or compensation will be insufficient on an ongoing basis, it must notify you in writing and tell you about the available choices. (If you have assigned your coverage under subpart I of this part, your employing office must give the notice to your assignee(s).)

(2) You (or your assignee) must return the notice to your employing office within 31 days of receiving it (45 days, if you live overseas). (We consider that you receive a mailed notice 5 days after the date of the notice.) When you return

the notice, you must state which of these choices you want:

(i) To terminate some or all of your insurance; or

(ii) To make direct premium payments.

(3) If you do not return the notice within the required time frames, your employing office will terminate your insurance.

(d)(1) Terminated coverage stops at the end of the last pay period for which your employing office withheld premiums.

(2) If your insurance terminates, either by choice or by failure to return the notice, you get the 31-day extension of coverage and right to convert, as provided in subpart F of this part.

(e)(1) If you are an employee, and your coverage terminates under this section, your employing office will reinstate the terminated coverage automatically, when your pay again becomes sufficient to allow premium withholdings.

(2) If you are insured as an annuitant or compensationer, and your coverage terminates under this section, your retirement system will not reinstate your coverage when your annuity or compensation becomes sufficient to cover withholdings.

(f)(1) Employing offices must establish a method for accepting premium payments for insured individuals who choose to pay directly.

(2) If you are paying premiums directly, you must send the required payment for every pay period during which your insurance continues. You must make the payment after each pay period, according to the schedule your employing office sets up.

(g)(1) If you are an employee making direct payments, your employing office will begin to withhold premiums from your pay automatically, when your pay again becomes sufficient to allow withholdings. You must stop making direct payments.

(2) If you are insured as an annuitant or compensationer, you must continue to make direct payments, even if your annuity or compensation becomes sufficient to allow withholdings.

(h) Your employing office must submit all direct premium payments to OPM, along with the regular life insurance premiums, according to OPM's procedures.

(i)(1) If you are on direct pay, and you don't make the required payment on time, your employing office (or its designated agent) must notify you. You must make the payment within 15 days after receiving the notice (45 days, if you live overseas). (We consider that you receive a mailed notice 5 days after the date of the notice.)

(2) If you do not make the overdue payment, your insurance cancels. Cancellation is effective at the end of the last pay period for which your employing office (or its designated agent) received payment.

(3) If your insurance cancels for nonpayment, you do not get the 31-day extension of coverage or the right to convert provided in subpart F of this part.

(4) Coverage that cancels for nonpayment is not reinstated when your pay, annuity, or compensation becomes sufficient to allow withholdings. Cancelled coverage cannot be reinstated, except as provided in paragraph (i)(5) of this section.

(5) If you are unable to pay within 15 days of receiving the past due notice (45 days, if you live overseas) for reasons beyond your control, you may request reinstatement of your coverage. You must make the request to your employing office in writing within 30 days from the date of cancellation. You must provide proof that you were unable to pay within the time limit for reasons beyond your control. Your employing office will decide if you are eligible for reinstatement. If your employing office approves your request, it will reinstate your coverage back to the date of cancellation, and you must pay the back premiums.

§ 870.410 What else should I know about withholdings and contributions?

(a) If your annual pay is paid during a period shorter than 52 work weeks, your employing office must determine the amount to withhold. To do this, it converts the biweekly cost to an annual cost and prorates it over the number of installments of your pay regularly paid during the year.

(b) Withholdings (and Government contributions, if applicable) are based on the amount of insurance you have at the end of the pay period.

(c) You do not have to pay any premiums for the period between the end of the pay period in which you separate from service and the date your annuity or compensation begins.

(d) You do not have to pay any premiums while you are in nonpay status for up to 12 months. *Exceptions:*

(1) If you are in nonpay status while receiving compensation, you do have to pay premiums. OWCP withholds the payments from your compensation.

(2) If you accept another position while you are in nonpay status, you do have to pay premiums. The agency that is actually paying you a salary withholds the payments from your salary.

(e) Effective October 21, 1972, if there is an official finding that you were suspended or fired erroneously, no withholdings are made from your back pay award. Exception: If you die or have an accidental dismemberment between your removal and the finding that your agency's action was erroneous, premiums are withheld from your back pay award.

(f) If your pay, annuity, or compensation is high enough to cover some of your premium withholdings, but not all of them, your employing office must make the withholdings in the following order:

(1) Basic insurance;

(2) Option B;

(3) Option A; then

(4) Option C.

Subpart E—Coverage

§ 870.501 How do I get Basic insurance?

(a) You get Basic insurance automatically when you are appointed or transferred to a position in which you are eligible for FEGLI. The coverage is effective the first day you are in pay and duty status. *Exceptions:*

(1) If you file a waiver with your employing office before the end of the first pay period, you will not have Basic insurance.

(2) If you previously filed a waiver of Basic insurance, and it's still in effect, you will not have Basic insurance.

(b) If you are an employee of the District of Columbia Financial Responsibility and Management Assistance Authority, and you elect to be considered a Federal employee under section 153 of Pub. L. 104–134 (110 Stat. 1321), you are insured automatically on the later of:

(1) The first day you are in pay and duty status with the Authority; or

(2) The date the Authority receives your election to be considered a Federal employee.

(c) If you return to pay and duty status after 12 months or more in nonpay status, you automatically get Basic insurance the first day you are back in pay and duty status. Exceptions:

(1) If you file a waiver with your employing office before the end of the first pay period back in pay and duty status, you will not have Basic insurance.

(2) If you previously filed a waiver of Basic insurance, and it's still in effect, you will not have Basic insurance.

(d) If you serve in cooperation with a non-Federal agency, and you are paid in whole or in part from non-Federal funds, OPM sets the effective date for

your Basic insurance. This date must be part of an agreement between OPM and the non-Federal agency. The agreement must provide either:

(1) That the required withholdings and contributions be made from Federally controlled funds and deposited on time into the Employees' Life insurance Fund; or

(2) That the cooperating non-Federal agency, by written agreement with the Federal agency, make the required withholdings and contributions from non-Federal funds. The non-Federal agency must send the payment to the Federal agency to deposit on time into the Employees' Life Insurance Fund.

§ 870.502 How do I get Optional insurance?

(a) You must have Basic insurance before you may elect Optional insurance.

(b)(1) If you want Optional insurance, you must elect it (in a way that OPM designates) within 31 days after becoming eligible. The 31-day time limit begins on the first day (after February 28, 1981) on which you meet the definition of employee. *Exception:* If you previously filed a waiver of Optional insurance, and it's still in effect, you cannot elect Optional insurance.

(2) If you do not elect a particular type of Optional insurance, we consider that you waived that type of coverage.

(3) For Options B and C, if you elect fewer than 5 multiples, we consider that you waived the multiples you did not elect.

(4) Only you may elect Optional insurance. No one may elect it on your behalf.

(c) If you are an employee of the District of Columbia Financial Responsibility and Management Assistance Authority, and you elect to be considered a Federal employee under section 153 of Public Law 104–134 (110 Stat. 1321), you may elect Optional insurance. You must make an election within 31 days after the later of:

(1) The date your employment with the Authority begins; or

(2) The date the Authority receives your election to be considered a Federal employee.

(d) If your Optional insurance stopped for a reason other than a waiver, your insurance reinstates automatically on the first day you are in pay and duty status in a position in which you again become eligible.

§ 870.503 When does Optional insurance become effective?

Optional insurance is effective the first day you are in pay and duty status on or after the day your employing office receives your election.

§ 870.504 Are there any extensions to the 31-day time limit for electing Optional insurance?

(a)(1) The time limit may be extended up to 6 months after the date you became eligible. To qualify, you must demonstrate to your employing office that you were not able to make your election on time for reasons beyond your control.

(2) If your employing office allows you to make a belated election, you must make your election within 31 days after your employing office notifies you of the determination.

(b) If you make a belated election as described in paragraph (a) of this section, your Optional insurance coverage is retroactive to the first day of the first pay period beginning after the date you became eligible (or after April 1, 1981, if that is later). You must pay the full cost of your Optional insurance back to that effective date for the time that you are in pay status (or retired or receiving compensation and under age 65).

§ 870.505 Can I cancel my insurance?

(a) You may cancel some or all of your insurance at any time by filing a waiver. Only you may cancel your insurance; no one may cancel your insurance on your behalf. *Exception:* If you have assigned your insurance under subpart I of this part, you cannot cancel your Basic, Option A, or Option B insurance or reduce the number of multiples of Option B.

(1) If you are an employee, you must file the waiver with your agency employing office.

(2) If you are an annuitant, you must file the waiver with OPM.

(3) If you are a compensationer within the first 12 months of nonpay status, you must file the waiver with your employing office. If you have separated or completed 12 months in nonpay status, you must file the waiver with OPM.

(b) Your waiver is effective, and your insurance stops, at the end of the last day of the pay period in which you properly file the waiver. *Exception:* If you cancel Option C because you do not have any eligible family members, the effective date is retroactive to the end of the pay period in which there stopped being any eligible family members.

(c) If you cancel your Basic insurance, you automatically cancel all of your Optional insurance.

§ 870.506 How long does my waiver last?

Your waiver lasts until you:

(a) Cancel the waiver, as explained in § 870.507 of this part; or

(b) Have a break in service of at least 180 days.

§ 870.507 How can I cancel my waiver and get insurance?

(a) If you are an employee, there are 3 ways you may cancel a waiver and become insured:

(1) Getting a physical exam (providing medical evidence of insurability);

(2) Having a life event; or

(3) Making an election during an open season.

(b) You may elect only certain types of insurance with each of these, as follows:

	Basic	Option A	Option B	Option C
Physical exam	Yes	Yes	Yes	No.
Life event	No	No	Yes (if you have Basic)	Yes (if you have Basic).
Open season	As announced by OPM	As announced by OPM	As announced by OPM	As announced by OPM.

§ 870.508 How do I cancel my waiver by getting a physical exam?

(a) You cannot cancel a waiver of Option C by having a physical exam.

(b)(1) You may cancel a waiver of Basic insurance, Option A, and Option B by getting a physical exam to provide medical evidence of insurability, if at least 1 year has passed since the effective date of your waiver. You are responsible for any costs associated with the physical exam. *Exception:* The 1-year requirement doesn't apply to Option B coverage if you elected fewer than 5 multiples of Option B because of the limitation stated in § 870.513.

(2) You and your employing office each must complete part of the Request for Insurance form. Your doctor also must complete part of the form and then send it to OFEGLI.

(c) OFEGLI reviews the Request for Insurance and decides whether to approve it. OFEGLI notifies your agency of its decision, and your agency notifies you.

§ 870.509 What happens after OFEGLI makes its decision?

(a)(1) If OFEGLI approves your Request for Insurance, your Basic insurance (if you do not already have Basic) is effective the first day you are in pay and duty status after OFEGLI's approval.

(2) If you are not in pay and duty status within 31 days after OFEGLI's approval, the approval is revoked automatically, and you are not insured.

(b)(1) If you want to elect Option A or Option B, you must file an election within 31 days after OFEGLI's approval. You may elect any number of multiples of Option B, up to the maximum of 5. Your coverage is effective the first day you are in pay and duty status on or after the day your employing office receives your election. We consider that you again waived any coverage that you do not elect.

(2) If you are not in pay and duty status within 31 days after OFEGLI's approval, the approval is revoked automatically, and you do not have the Optional insurance.

§ 870.510 What is a life event?

A life event is one of the following:

(a) Marriage;

(b) Divorce;

(c) Death of your spouse; or

(d) Acquiring an eligible child.

§ 870.511 How do I cancel my waiver if I have a life event?

(a)(1) You cannot cancel a waiver of Basic insurance or Option A because of a life event.

(2) You must have Basic insurance to make an Option B or Option C election because of a life event.

(b)(1) You may elect Option B and/or Option C if you get married or acquire an eligible child. If you have Option B or Option C, but you have fewer than 5 multiples, you may increase the number of multiples. *Exception:* If your life event is acquiring a foster child, you cannot make an Option B election.

(2) You may elect Option B or Option C if you get divorced or your spouse dies only if you have at least 1 eligible child. If you have Option B or Option C, but you have fewer than 5 multiples, you may increase the number of multiples.

(3) There are limitations on the number of multiples of Option B you may elect with a life event. See § 870.513(a) of this part.

(c) If you elect Option B and/or Option C, and your life event is acquiring a disabled child age 22 or older, you must provide a doctor's certificate to your employing office at the time you make the election. The doctor's certificate must show that your child meets the requirements stated in § 870.307.

§ 870.512 When can I make a life event election?

(a) You must make your election, in a way that OPM designates, and provide proof of the event, within 60 days after your life event.

(b) You may also make your election before the life event. In this case you must provide proof of the event within 60 days after the date of the life event.

(c) If you are making an Option C election because of acquiring an eligible foster child, you must file the election with your employing office no later than 60 days after completing the required certification.

(d) Employees with Option C coverage who had a life event between October 30, 1998, and April 23, 1999, had until June 23, 1999, to make an election under this section to increase the number of Option C multiples.

§ 870.513 How many multiples of Options B and C can I elect due to a life event?

(a) For *Option B* you may elect the following number of multiples (the total number of Option B multiples cannot be more than 5):

(1) For marriage, the number of additional family members (spouse and eligible children) you acquire with the marriage.

(2) For acquiring an eligible child or children, the number of eligible children you acquire; foster children are not included in this count.

(3) For divorce or death of your spouse, the total number of eligible children you have.

(4) If you want more multiples of Option B than you can elect with a life event, you may elect additional multiples by following the procedure given in § 870.508 of this part.

(b) For *Option C* you may elect any number of multiples you want, as long as the total is not more than 5.

§ 870.514 When does my Option B and Option C life event coverage become effective?

(a) For *Option B,*

(1) If you file your election on or after the date of your life event, coverage becomes effective the first day you are in pay and duty status on or after the date your employing office receives your election.

(2) If you file your election before your life event, coverage becomes effective the first day you are in pay and duty status on or after the date of your life event.

(b) For *Option C:*

(1) If your election is based on a life event other than acquiring a foster child,

(i) If you file your election on or after the date of your life event, coverage becomes effective the date your employing office receives your election.

(ii) If you file your election before your life event, coverage becomes effective on the date of your life event.

(iii) If you made an Option C election under § 870.512(d), your coverage was effective April 24, 1999.

(2) If your election is based on acquiring a foster child, your coverage is effective the later of:

(i) The date your employing office receives your election; or

(ii) The date you complete the certification.

(3) You do not have to be in pay and duty status for Option C life event coverage to become effective.

§ 870.515 Are there any extensions to the time limit for making a life event election?

(a) If you are not serving in a covered position on the date of your life event, you may make your life event election within 31 days after you do become employed in a covered position.

(b) If you separate from service before the end of the 60-day time limit, you may make your life event election within 31 days after you return to service in a covered position.

(c) If you don't have Basic insurance on the date of your life event, and you are electing it by having a physical exam, you may make an Option C life event election within 31 days after the date OFEGLI approves your Request for Insurance.

§ 870.516 How often does OPM have FEGLI open seasons?

OPM does not hold FEGLI open seasons on a regular basis. We schedule them only occasionally.

§ 870.517 What coverage can I elect during an open season?

When we schedule an open season, we announce the types of coverage you may elect.

§ 870.518 What is the effective date for open season elections?

OPM sets the effective date when we announce an open season. Your new coverage becomes effective the first day of the first pay period which begins on or after the date we set and which follows a pay period in which you meet certain pay and duty status requirements. Before the start of an open season, we will announce the pay and duty status requirements in a **Federal Register** notice.

§ 870.519 Are there any extensions to the open season dates?

(a)(1) The time limit may be extended up to 6 months after the open season ends. To qualify, you must demonstrate to your employing office that you were not able to make your open season election on time for reasons beyond your control.

(2) If your employing office makes that determination, you must make your election within 31 days after your employing office notifies you of the determination.

(b) If you make a belated open season election as described in paragraph (a) of this section, your new coverage becomes effective the first pay period which begins on or after the effective date OPM set. You have to meet the pay and duty status requirements that OPM announced in the **Federal Register**.

§ 870.520 Can annuitants and compensationers get FEGLI coverage?

(a) If you are an annuitant, you cannot elect FEGLI coverage, unless you are reemployed in a position in which you are eligible for FEGLI.

(b)(1) If you are a compensationer within the first 12 months of nonpay status, you may elect coverage. However, you must be back in pay and duty status before your new coverage can become effective. *Exception:* If you make an Option C election due to a life event, you do not have to be in pay and duty status for the coverage to become effective.

(2) If you have separated or completed 12 months in nonpay status, you cannot elect FEGLI coverage.

§ 870.521 What happens if I leave Government and then return to service?

(a) Waivers are cancelled automatically after a 180-day break in service.

(b)(1) When you return to service in a covered position after a break of at least 180 days, you get Basic insurance automatically, as stated in § 870.501.

(2) Unless you waive Basic insurance, you may elect any Optional insurance within 31 days after your return to service.

(3) If you do not make a new Optional insurance election, you will get back whatever Optional insurance you had immediately before you separated from service. Any Optional insurance that you had previously waived is waived again.

(c) When you return to service in a covered position after a break of less than 180 days, you get back whatever Optional insurance you had immediately before you separated from service. You cannot elect more coverage, except as described in § 870.507.

§ 870.522 What happens if I go into a nonpay status?

If you go into a nonpay status, your life insurance continues for up to 12 months. You do not have to pay any premiums. *Exceptions:*

(a) If you are receiving compensation, OWCP withholds the FEGLI premiums from your compensation.

(b) If, while you are in nonpay status, you accept an appointment to another position, the agency where you are receiving a salary withholds the premiums from your salary.

§ 870.523 Special nonpay situations.

(a) *Employee organizations:*

(1) If you go on leave without pay (LWOP) to serve as a full-time officer or employee, you may elect to continue your life insurance. You must make the election within 60 days of the start of the LWOP.

(2) Your coverage continues for the length of the appointment, even if your LWOP lasts longer than 12 months.

(3) You must pay to your employing office the full cost of Basic and Optional insurance. There is no Government contribution.

(b) *State government, local government, and institutions of higher education:*

(1) If you go on LWOP while assigned to one of these, your life insurance continues for the length of the assignment, even if your LWOP lasts longer than 12 months.

(2) You must pay your premiums to your Federal agency on a current basis. The agency must continue to pay its contribution for Basic insurance as long as you make your payment.

(c) *International organizations:*

(1) If you go on LWOP when transferred to an international organization, you must state in writing whether you want to continue your FEGLI coverage. You may continue FEGLI whether or not you choose to continue your Federal retirement or health benefits.

(2) If you choose to continue your coverage, you must pay your premiums to your Federal agency on a current basis. The agency must continue to pay its contribution for Basic insurance as long as you make your payments.

(3) If you separate from service, instead of going on LWOP, for FEGLI purposes we treat you as being in a nonpay status.

(4) The regulations on transfers to international organizations are in part 352, subpart C, of this chapter.

Subpart F—Termination and Conversion

§ 870.601 When does my Basic insurance stop?

(a) Unless you are eligible to continue your insurance as an annuitant or compensationer (see subpart G of this part), your Basic insurance stops on the date you separate from service. (See paragraph (f) of this section.)

(b) If you separate from service after meeting the requirement for an immediate annuity under § 842.204(a)(1) of this chapter, and you postpone receiving the annuity as provided by § 842.204(c) of this chapter, your Basic insurance stops on the date you separate from service. (See paragraph (f) of this section)

(c) If you move to a position in which you are excluded from FEGLI, your Basic insurance stops on the last day in your former position. (See paragraph (f) of this section.) *Exception:* If the position is excluded by regulation (not by law), and you do not have a break in service of more than 3 days, your FEGLI continues.

(d)(1) Unless you are eligible to continue your insurance as a compensationer, your Basic insurance stops on the date you complete 12 months in nonpay status. (See paragraph (f) of this section.)

(2) Your 12-month nonpay period does not have to be continuous. If you return to pay status for less than 4 consecutive months, your 12-month period continues when you go back into a nonpay status. If you've already used up your 12-month period, and you return to service for less than 4 consecutive months, your Basic insurance stops on the last day of the last pay period in pay status.

(3) If you return to pay status for at least 4 consecutive months, you start a new 12-month period if you go back into a nonpay status.

(4) To meet the ''4 consecutive months'' requirement, you must be in pay status for at least part of each pay period during 4 consecutive months.

(5) If you are entitled to benefits under part 353 of this chapter (USERRA—Uniformed Services Employment and Reemployment Rights Act of 1994), we consider you to be an employee in nonpay status.

(e) Unless you choose to make direct premium payments under § 870.409, your Basic insurance stops at the end of the pay period in which your employing office determines that your pay, annuity, or compensation is not enough to cover the full cost of Basic insurance. (See paragraph (f) of this section.)

(f)(1) When your Basic insurance stops as described in paragraphs (a), (b), (c), (d), and (e) of this section, we consider it a termination. When your insurance terminates, you are entitled to a 31-day extension of coverage from the date of the termination.

(2) You do not have to pay any premiums for the 31-day extension, and your employing office does not have to pay any Government contribution for the 31-day extension.

(3) Your coverage during this 31-day extension does not include AD&D benefits.

(g) Your Basic insurance also stops if you file a waiver as described in § 870.505. We consider this a voluntary cancellation. You do not get a 31-day extension of coverage if you cancel your insurance.

§ 870.602 When does my Optional insurance stop?

(a)(1) Your Optional insurance stops at the same time your Basic insurance stops. (See paragraph (d) of this section.)

(2) If your Optional insurance stops because of separation or completing 12 months in a nonpay status, and you meet the requirements for portability (see subpart L of this part), you may choose to port your Option B coverage, instead of having it terminate.

(b)(1) If you are eligible to continue your Basic insurance as an annuitant or compensationer, but you are not eligible to continue your Optional insurance (see §§ 870.701 and 870.702 of this part), your Optional insurance stops on the date that your Basic insurance is continued or reinstated. (See paragraph (d) of this section.)

(2) If you are a compensationer who meets the requirements for portability (see subpart L of this part), you may choose to port your Option B coverage, instead of having it terminate.

(c)(1) Unless you choose to make direct premium payments under § 870.409, your Optional insurance stops at the end of the pay period in which your employing office determines that your pay, annuity, or compensation is not enough to cover the full cost of your Optional insurance. (See paragraph (d) of this section.)

(2) If your pay, annuity, or compensation is enough to cover the cost of some of your Optional insurance, but not all of it, and you choose not to make direct premium payments, your Optional insurance stops in the following order:

(i) Option C;

(ii) Option A; then

(iii) Option B.

(d)(1) When your Optional insurance stops as described in paragraphs (a), (b), and (c) of this section, we consider it a termination. When your insurance terminates, you are entitled to a 31-day extension of coverage from the date of the termination. You do not have to pay any premiums for the 31-day extension.

(2) Your Option A coverage during the 31-day extension does not include AD&D benefits.

(e) Your Optional insurance also stops if you file a waiver as described in § 870.505. We consider this a voluntary cancellation. You do not get a 31-day extension of coverage if you cancel your insurance.

§ 870.603 Can I convert my insurance to a private policy?

(a) Whenever your group coverage stops (except for a voluntary cancellation), you may convert any or all of your Basic and Optional insurance to an individual policy. You do not have to have a medical examination. The premiums for your individual policy depend on your age and class of risk. *Exception*: You cannot convert if you return to service in a covered position within 3 days after the terminating event.

(b) If you have assigned your insurance, the assignee(s) has (have) the right to convert, instead of you. In this case, the word ''you'' in this section and in §§ 870.604, 870.605, and 870.606 refers to your assignee(s). Your assignee(s) must pay the premiums for the converted coverage.

(c) Your employing office must notify you (or your assignee(s)) of your right to convert when your insurance stops. It must give you this notification either before or immediately after the event that causes your insurance to stop.

(d) Unless you have assigned your insurance, only you have the right to convert. No one may convert on your behalf.

§ 870.604 How long do I have to convert my insurance?

(a) You must submit your request for conversion information to OFEGLI. OFEGLI must receive your request within 65 days after the date of the terminating event (79 days, if you live overseas).

(b) If you do not use your conversion right within that time period, we consider that you have refused coverage.

§ 870.605 Are there any extensions to the time limit for conversion?

(a) The time limit may be extended up to 6 months after the date of the terminating event. To qualify, you must demonstrate to OFEGLI that:

(1) Your employing office did not give you the required notification and you were not aware of the time limit for conversion; or

(2) You were not able to convert on time for reasons beyond your control.

(b) If OFEGLI approves your request to convert, you must convert within 31 days of that approval.

§ 870.606 When is my conversion policy effective?

Your individual conversion policy is effective at the end of your 31-day extension of coverage.

§ 870.607 Can my family members convert my Option C coverage?

(a) Your family members may convert Option C coverage (and name beneficiaries of their choice) if:

(1) You die; or

(2) Your insurance stops under circumstances that allow you to convert your coverage, but you do not convert your Option C coverage.

(b) Family members may convert an amount up to the full value of your Option C insurance. (For your spouse, the maximum amount possible is $25,000; for an eligible child the maximum amount possible is $12,500.) Family members may also convert a lesser amount of coverage.

(c)(1) If you have Option C coverage and you die, your employing office must send a conversion notice to your family members at your last address on file.

(2) If your coverage stops and you do not convert, your family members must contact your agency or retirement system to request a conversion notice if they want to convert.

(d) Your family members must submit the request for conversion to OFEGLI within 31 days of the later of:

(1) The date of your death or the terminating event; or

(2) The date they receive the notice of the right to convert.

(e) Your family members' conversion policy is effective at the end of your 31-day extension of coverage.

(f)(1) Your spouse does not have the right to convert when he/she loses eligibility due to divorce or annulment of your marriage.

(2) Your children do not have the right to convert when they marry, reach age 22, or otherwise no longer meet the definition of ''child'' given in § 870.101.

Subpart G—Annuitants and Compensationers

§ 870.701 Can I keep my life insurance when I retire?

(a) When you retire, you may keep your FEGLI if you meet the following requirements:

(1) You retire on an immediate annuity under a retirement system for

civilian employees. This includes the retirement system of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard;

(2) You meet the ''5-year/all-opportunity'' requirement. This means you had FEGLI for either:

(i) The 5 years of service immediately before the date your annuity starts, or

(ii) The entire time you were eligible for FEGLI, if that's less than 5 years; and

(3) You do not convert your insurance, as described in subpart F of this part. (If we do not determine that you are eligible to continue FEGLI as an annuitant until after you have converted your coverage, your group coverage may be reinstated. To qualify, you must void your conversion policy. We will reinstate your group coverage retroactively, and the company issuing your conversion policy must refund your premiums.)

(b) Your Basic and Option A insurance as an annuitant does not include AD&D benefits.

§ 870.702 Can I keep my life insurance if I become a compensationer?

(a) During your first 12 months in nonpay status while you are a compensationer, you keep your FEGLI coverage as an employee.

(b) When you separate or complete 12 months in nonpay status, you may continue your FEGLI if you meet the following requirements:

(1) You had FEGLI for either:

(i) The 5 years of service immediately before the date you became entitled to receive compensation, or

(ii) The entire time you were eligible for FEGLI, if that's less than 5 years; and

(2) You do not convert your insurance, as described in subpart F of this part. (If we do not determine that you are eligible to continue FEGLI as a compensationer until after you have converted your coverage, your group coverage may be reinstated. To qualify, you must void your conversion policy. We will reinstate your group coverage retroactively, and the company issuing your conversion policy must refund your premiums.)

(c) Your Basic and Option A insurance as a compensationer does not include AD&D benefits.

§ 870.703 Do I have to meet the 5-year/all-opportunity requirement for all my insurance?

(a)(1) To continue a particular type of insurance as an annuitant or compensationer, you must meet the 5-year/all-opportunity requirement for that type of insurance. For Option B and Option C, the requirement applies to each multiple.

(2) If you do not meet the requirement for a particular type or multiple of insurance, that coverage or multiple will terminate. You will get the 31-day extension of coverage and right to convert for any insurance that terminates.

(b) There are no waivers of the 5-year/all-opportunity requirement.

(c) For the purpose of meeting the 5-year/all-opportunity requirement, we do not consider you to have been eligible for Option C during any period when you had no eligible family members.

§ 870.704 How much insurance can I continue as an annuitant or compensationer?

(a) *Basic insurance:* The amount you may continue as an annuitant or compensationer is your BIA on the date your insurance would otherwise stop because of your separation or completion of 12 months in nonpay status. If you elected a partial living benefit, this amount is your post-election BIA.

(b) *Option A:* You may continue $10,000.

(c) *Option B and Option C:* You may continue the number of multiples that meet the 5-year/all-opportunity requirement. You may also choose to continue fewer multiples.

§ 870.705 Are these the amounts that will be paid when I die or if a family member dies?

(a)(1) *Basic insurance:* Your BIA is the starting point for determining the amount that OFEGLI will pay when you die.

(2) If you are under age 45, you still have the extra benefit described in § 870.204. *Exception:* If you retired or started receiving compensation before October 10, 1980, you do not have an extra benefit.

(3) If you are age 65 or older, the amount of benefits may be reduced, depending on the election you made. See § 870.706.

(4) You do not have AD&D benefits when you are insured as an annuitant or compensationer.

(b)(1) *Option A:* If you are under age 65, the benefit payable is $10,000.

(2) If you are age 65 or older, the Option A benefit payable is reduced. See § 870.708(a).

(3) You do not have AD&D benefits when you are insured as an annuitant or compensationer.

(c)(1) *Option B and Option C:* If you are under age 65, the benefit payable is the full amount you continued (unless you later cancelled some of the coverage).

(2) If you are age 65 or older, the benefit payable may be reduced, depending on the election you made. See § 870.708.

§ 870.706 What kind of election can I make about reductions in my Basic insurance?

(a)(1) At the time you retire or become insured as a compensationer, you must choose the level of post-65 reduction you want for your Basic insurance. There are 3 choices: 75% Reduction, 50% Reduction, and No Reduction.

(2) You must make your election in a way that OPM designates. We must receive your election before we make a final decision on your application for annuity (or supplemental annuity) or your request to continue FEGLI as a compensationer. If you do not make an election, you get 75% Reduction automatically.

(3) If you elected a partial living benefit under subpart K of this part, you must elect No Reduction.

(4) Only you may make this initial election. No one may make the election on your behalf.

(b) The amount of Basic insurance payable reduces by 2 percent of your BIA each month. The reduction continues until 75 percent of your BIA is gone, and 25 percent remains.

(1) This reduction starts at the beginning of the 2nd month after the date you turn 65.

(2) If you are already age 65 or older when you retire or become insured as a compensationer, the reduction starts at the beginning of the 2nd month after the date you separate or complete 12 months in nonpay status.

(c) The amount of Basic insurance payable reduces by 1 percent of your BIA each month. The reduction continues until 50 percent of your BIA is gone, and 50 percent remains.

(1) This reduction starts at the beginning of the 2nd month after the date you turn 65.

(2) If you are already age 65 or older when you retire or become insured as a compensationer, the reduction starts at the beginning of the 2nd month after the date you separate or complete 12 months in nonpay status.

(d) The amount of Basic insurance payable does not reduce. The full amount of your BIA remains payable when you die.

(e) See § 870.403 for how your election affects your premiums.

§ 870.707 Can I change my post-65 reduction election for Basic insurance?

(a) You may make certain changes. They are shown in the following table and discussed in more detail after the table:

You (or your assignee) can change basic insurance from	To 75% reduction	To 50% reduction	To no reduction
75% Reduction	Not applicable	No	No.
50% Reduction	Yes	Not applicable	No.
No Reduction	Yes (unless you elected a partial living benefit).	No	Not applicable.

(b)(1) If you elect 50% Reduction or No Reduction, you may cancel this election at any time. You will then get 75% Reduction. *Exceptions:*

(i) If you have assigned your insurance, you cannot cancel your election of 50% Reduction or No Reduction. Only your assignee(s) can cancel your election.

(ii) If you elected a partial living benefit, you must elect No Reduction for your Basic insurance. You cannot later cancel that election. If you assigned your remaining coverage after electing a partial living benefit, your assignee(s) cannot cancel your election of No Reduction.

(2) The amount of your Basic insurance remaining switches automatically to the amount that would be in effect if you had elected 75% Reduction originally. You do not get a refund of the extra premiums you paid for the higher level of coverage.

(c)(1) If you elect 75% Reduction, you cannot cancel the election.

(2) If you elect 50% Reduction, you cannot change the election to No Reduction.

(3) If you elect No Reduction, you cannot change the election to 50% Reduction.

§ 870.708 What kind of election can I make about reductions in my Optional insurance?

(a)(1) For Option A, there is no election for the post-65 reduction.

(2) The amount of Option A insurance payable reduces 2 percent of the original amount each month. The reduction continues until 75 percent ($7,500) of your coverage is gone, and 25 percent ($2,500) remains.

(b)(1) You must make a post-65 reduction election for Option B and Option C. There are 2 choices: Full Reduction and No Reduction.

(2) If you do not make an election, you get Full Reduction automatically.

(3) If you elected a living benefit, it has no effect on your Optional insurance. You may elect whatever you want for Option B and Option C.

(4) You do not have to make the same election for both Option B and Option C. If you want, you may make different elections for each one.

(5) This initial election applies to all multiples of a particular type of insurance. You cannot elect initially to have some multiples of an option reduce and others not reduce.

(6) Only you may make this initial election. No one may make the election on your behalf.

(c) The amount of Option B and/or Option C insurance payable reduces by 2 percent of the original amount each month. The reduction continues until your insurance is completely gone. This happens at the end of the last day before the 50th reduction. You do not get a 31-day extension of coverage or right to convert.

(d) The amount of Option B and/or Option C insurance payable does not reduce. The full amount of your Option B coverage remains payable when you die. The full amount of your Option C coverage remains payable when an eligible family member dies.

(e)(1) The reductions described in paragraphs (a) and (c) of this section start at the beginning of the 2nd month after the date you turn 65.

(2) If you are already age 65 or older when you retire or become insured as a compensationer, the reductions start at the beginning of the 2nd month after the date you separate or complete 12 months in nonpay status.

(f)(1) Your Option A coverage is free, starting the month after the month in which you turn 65.

(2) If you elect Full Reduction for Option B or Option C, that coverage is free, starting the month after the month in which you turn 65.

(3) If you elect No Reduction for Option B or Option C, you continue to pay the premiums for your age group for that coverage, as long as you remain insured.

§ 870.709 When do I have to make the post-65 reduction election for Option B and Option C?

(a) At the time you retire or become insured as a compensationer, you must elect the number of multiples you want to continue during retirement or while receiving compensation.

(b)(1) If you separate for retirement or become insured as a compensationer on or after April 24, 1999, you must elect either Full Reduction or No Reduction for all the multiples you continue.

(2) If you do not make an election, you get Full Reduction automatically.

§ 870.710 What if I was already retired or insured as a compensationer on April 24, 1999?

(a) If you were already retired or insured as a compensationer on April 24, 1999, and you had Option B, you were given an opportunity to make a reduction election for Option B.

(1) If you were under age 65, you were notified of the right to elect No Reduction. Your retirement system will send you an actual election notice before your 65th birthday, as provided in § 870.711(d).

(2) If you were age 65 or older, and you still had some Option B coverage remaining, you were given the opportunity to stop further reductions. You had until October 24, 1999, to make an election. If you elected No Reduction, the amount of your Option B coverage in effect on April 24, 1999, was frozen. You had to pay premiums retroactive to April 24, 1999.

(b) If you were already retired or insured as an annuitant or compensationer on April 24, 1999, you could not make a reduction election for Option C.

§ 870.711 Can I change my post-65 reduction election for Option B or Option C?

(a) You may make certain changes. They are shown in the following tables and discussed in more detail after the tables:

Can change *Option B* from	You	Your assignee
Full Reduction to No Reduction—if you are under age 65	Yes	No.
Full Reduction to No Reduction—if you are age 65 or older	No, except as stated in § 870.711(d)(2)	No.
No Reduction to Full Reduction—if you are under age 65	Yes, unless you assigned your insurance	Yes.
No Reduction to Full Reduction—if you are age 65 or older	Yes, unless you assigned your insurance	Yes.

Can change *Option C* from	You	Your assignee
Full Reduction to No Reduction—if you are under age 65	Yes	No.
Full Reduction to No Reduction—if you are age 65 or older	No, except as stated in § 870.711(d)(2)	No.
No Reduction to Full Reduction—if you are under age 65	Yes	No.
No Reduction to Full Reduction—if you are age 65 or older	Yes	No.

(b)(1) Before you reach age 65, you may change from No Reduction to Full Reduction at any time. *Exception:* If you have assigned your insurance, only your assignee(s) may change from No Reduction to Full Reduction for your Option B coverage.

(2) Before you reach age 65, you may change from Full Reduction to No Reduction at any time.

(c)(1) After you reach age 65, you may change from No Reduction to Full Reduction at any time. *Exception:* If you have assigned your insurance, only your assignee(s) may change from No Reduction to Full Reduction for your Option B coverage. If you change to Full Reduction after you reach age 65, the amount of insurance remaining switches automatically to the amount that would be in effect if you had elected Full Reduction originally. You do not get a refund of the premiums you paid after age 65.

(2) After you reach age 65, you cannot change from Full Reduction to No Reduction, except as provided in paragraph (d)(2) of this section.

(d)(1) Shortly before you reach age 65, your retirement system will send a reminder about the election you made and will offer you a chance to change the election. At that time, you may choose to have some multiples of Option B and Option C reduce and some not reduce.

(2) If you are already age 65 or older at the time you retire or become insured as a compensationer, your retirement system will send the reminder and give you the opportunity to change your election as soon as the retirement processing or compensation transfer is complete.

(3) If you have assigned your insurance, and if you elected No Reduction for Option B coverage, your retirement system will send the reminder notice for Option B to your assignee(s).

(4) If you want to change your reduction election, you must return the notice by the end of the month following the month in which you turn 65. If you are already over age 65, you must return the notice by the end of the 4th month after the date of the letter. If you do not return the election notice, you will keep your initial election.

§ 870.712 Do the post-65 reductions apply to all annuitants and compensationers?

(a) There is an exception if you are a judge, and you retire under one of the following provisions:

(1) 28 U.S.C. 371(a) or (b);

(2) 28 U.S.C. 372(a); or

(3) 26 U.S.C. 7447.

(b) If this exception applies to you, you do not have any post-65 reductions. For FEGLI purposes, we consider you an employee. Your Basic and Optional insurance continues without interruption or reduction. *Exception:* If you are a judge eligible for compensation, and you choose to receive that instead of your annuity, the post-65 reductions and elections do apply to you.

§ 870.713 What if I'm an MRA+10 annuitant?

(a) An MRA+10 annuity counts as an immediate annuity. (See § 870.101 for the definition of an immediate annuity.) You must meet the 5-year/all-opportunity requirement described in § 870.701(a). If you do, OPM sends you a notice of insurance eligibility and an election form.

(b) Your FEGLI will be reinstated on the later of:

(1) The date your annuity starts; or

(2) The date we receive your application for annuity.

(c) You may reinstate only the coverage you had immediately before your insurance stopped—or a lesser amount of coverage. You cannot elect any new coverage.

(d) You must make a post-65 reduction election for Basic insurance and for Option B and Option C, if you have that coverage. OPM must receive your election within 60 days after the date we send it to you.

§ 870.714 What if I don't want to continue my insurance as an annuitant or compensationer?

(a) You don't have to continue your insurance if you don't want to. At the time you retire or would become insured as a compensationer, you may choose not to continue some or all of your FEGLI. However, if you do not continue your Basic insurance, you cannot continue any of your Optional insurance.

(b) Any coverage that you choose not to continue terminates, with the 31-day extension of coverage and right to convert. (See subpart F.)

§ 870.715 When does my insurance as an annuitant or compensationer stop?

(a) If you are retired on disability, and your annuity stops because you recover or return to earning capacity, your FEGLI stops. Your FEGLI stops on the date your annuity stops, with the 31-day extension of coverage and right to convert. *Exception:* If you apply for and receive an immediate annuity under other provisions of retirement law, your FEGLI continues.

(b) If you are a compensationer, and the Department of Labor finds that you are able to return to work, your FEGLI stops. Your coverage stops on the date your compensation stops, with the 31-day extension of coverage and right to convert. *Exceptions:* Your FEGLI continues if:

(1) You become an annuitant and are eligible to continue your coverage as an annuitant; or

(2) You return to work in a covered position.

(c) Unless you have assigned your insurance, you may cancel your insurance at any time, as described in § 870.505.

§ 870.716 Can my insurance be reinstated?

(a)(1) If you are an annuitant whose insurance stopped as described in § 870.710(a), and your disability annuity is restored (after December 31, 1983), you may reinstate your FEGLI.

(2) If your annuity is restored as described in paragraph (a)(1) of this section, OPM will mail you a notice of insurance eligibility and an election form. If you want to reinstate your FEGLI, you must complete the election form and return it to OPM. We must receive your election within 60 days after the date we send it to you.

(3) If you are reinstating your insurance, you may reinstate only the types of coverage you had immediately before your insurance stopped. You may also choose to reinstate only some types of Optional insurance or to reinstate fewer multiples of Option B or Option C. If you reinstate less coverage than you are eligible for, we consider that you are cancelling any coverage that do not reinstate. You cannot elect any new coverage.

(4) Your reinstated coverage becomes effective on the first day of the month after the date we receive your election. Your annuity withholdings are reinstated at the same time.

(5) If you are age 65 or older, and you elected 75% Reduction or 50% Reduction for Basic insurance or Full Reduction for Option B and/or Option C, the amount of your reinstated insurance is the same amount you would have if your insurance had not stopped. We determine the amount by computing the reductions during the period after your insurance stopped.

(b) If you are a compensationer whose insurance stopped as described in § 870.710(b), your FEGLI cannot be reinstated unless you successfully appeal the termination of your compensation.

(c) If your insurance stops for any other reason, it cannot be reinstated.

§ 870.717 What happens if I retire and then come back to work for the Federal Government?

(a) If your annuity stops when you are reemployed, the life insurance you have as an annuitant also stops.

(1) If you are reemployed in an excluded position, you get the 31-day extension and right to convert. You cannot get FEGLI as an employee.

(2) If you are reemployed in a covered position, you get FEGLI as an employee.

(b) If your annuity continues when you are reemployed, and you are reemployed in an excluded position, you keep your insurance as an annuitant.

(c)(1) If your annuity continues when you are reemployed, and you are reemployed in a covered position, any Basic, Option A, and Option C insurance you have as an annuitant is suspended. Your annuitant withholdings for this insurance are also suspended. The suspension is effective the day before your first day in pay status in your reemployment.

(2) Your Basic, Option A, and Option C insurance transfers to your employment. The amount of your Basic insurance and the withholdings for your Basic insurance are based on your salary in reemployment. Your agency employing office makes the Government contribution for Basic insurance, instead of OPM.

(3)(i) If you have Option B as an annuitant, you keep that coverage as an annuitant unless you elect to have it as an employee.

(ii) If you want to have Option B as an employee, you must make the election within 31 days after the date of your reemployment. If you make this election, the Option B you have as an annuitant is suspended the day before your Option B as an employee becomes effective. The amount of your Option B coverage and your withholdings are based on your salary in reemployment.

(d) If you are reemployed in a covered position, in addition to your annuitant coverage transferring to your employment, you will get back any coverage that terminated at the time you separated for retirement. *Exception:* If you have Option B coverage as an annuitant, and there were some multiples of Option B that terminated when you retired, you will not get those multiples back unless you elect to transfer your Option B coverage to your employment.

(e) If you are reemployed and then go into a nonpay status, the insurance you have through your reemployment terminates after 12 months. If this happens, you will get back your suspended annuitant coverage. If you later return to a pay status, your annuitant coverage will again be suspended, and you will get back the coverage you had through your reemployment.

§ 870.718 Can I elect more life insurance if I return to service?

(a) If you have a break in service of at least 180 days before you are reemployed, you may elect any coverage that you previously waived.

(b) If your break in service is less than 180 days, you may elect coverage only as described in § 870.507.

§ 870.719 What happens if I die or a family member dies after I return to service?

(a) If you die while you are reemployed, for each type of insurance you have, the amount payable is:

(1) *Basic insurance:* the higher of:

(i) The amount you have through your reemployment; or

(ii) The amount of your suspended annuitant coverage.

(2) *Option A:* the amount you have through your reemployment.

(3) *Option B:* the amount based on your election (either keeping Option B as an annuitant or having it as an employee).

(b) If you have Option C and an eligible family member dies while you are reemployed, the amount payable is the amount you have through your reemployment.

§ 870.720 What happens when I separate from service again?

(a) When you separate from service, you may keep the insurance you got through your reemployment if:

(1) You meet the 5-year/all-opportunity requirement described in § 870.701; and

(2) You qualify for a supplemental annuity or receive a new retirement right. If your retirement system does not allow its annuitants to receive a supplemental annuity or new retirement right, but you otherwise meet the requirements for one, we consider that you meet the requirements of this paragraph.

(b) If you meet the requirements in paragraph (a) of this section, this is what happens to each type of insurance you have:

(1) *Basic insurance:* You must choose between the insurance you got through your reemployment and your suspended annuitant coverage. (If you are age 65 or older and elected 75% Reduction or 50% Reduction, the reductions continued while your insurance was suspended.)

(2) *Option A and Option C:* You automatically continue the coverage you got through your reemployment.

(3) *Option B:*

(i) If you kept your Option B as an annuitant, you continue that coverage.

(ii) If you elected Option B as an employee, you must choose between the Option B you got through your reemployment and your suspended annuitant coverage. (If you are age 65 or older and elected Full Reduction, the reductions continued while your insurance was suspended.)

(c) If you are making an election under both paragraph (b)(1) and paragraph (b)(3)(ii) of this section, you do not have to make the same choice for Basic and Option B. You may choose to continue one type of coverage from your reemployment and the other type from your suspended annuitant insurance.

(d)(1) If you are eligible and choose to continue the Basic insurance and/or the Option B you got through your reemployment, you must make a new post-65 reduction election.

(2) If you are eligible to continue the Option C you got through your reemployment, you must make a new post-65 reduction election.

§ 870.721 What happens if I come back to work part-time, but I'm still receiving compensation?

(a) When you return to active Federal service, your insurance as a compensationer stops.

(1) If you are employed in an excluded position, you get the 31-day extension of coverage and right to convert. You cannot get FEGLI as an employee.

(2) If you are employed in a covered position, your FEGLI transfers to your employment. The amount of your Basic insurance and Option B, if you have that coverage, is based on your salary in reemployment.

(b) If you:

(1) Applied for retirement, and your application was approved, but

(2) You suspended receipt of your annuity while receiving compensation, we consider you to be a reemployed annuitant. The provisions of §§ 870.717, 870.718, 870.719, and 870.720 apply to you.

Subpart H—Order of Precedence and Designation of Beneficiary

§ 870.801 Who gets the life insurance benefits when I die?

(a) If you have assigned your insurance, OFEGLI will pay benefits to your assignee or your assignee's designated beneficiary. See § 870.915.

(b) If you have not assigned your insurance, and there is a valid court order in effect naming a specific person or persons to receive the life insurance benefits when you die, OFEGLI will pay the benefits to the person(s) named in the court order.

(c) If you have not assigned your insurance and there is no valid court order in effect, OFEGLI pays benefits according to an order of precedence, which is stated in 5 U.S.C. 8705(a). The same order of precedence applies to Basic insurance, Option A, and Option B. The order of precedence is:

(1) To your designated beneficiary or beneficiaries;

(2) If none, to your widow(er);

(3) If none, to your child, or children in equal shares. If any child dies before you, that child's share goes to his/her children or grandchildren;

(4) If none, to your parents in equal shares. If one of your parents dies before you, your surviving parent gets the entire amount;

(5) If none, to the executor or administrator of your estate;

(6) If none, to your next of kin, according to the laws of the State where you had your legal residence at the time of your death.

(d) Assignments and court orders preempt the order of precedence and are the only exceptions to the order of precedence.

§ 870.802 What are the requirements for a court order to be valid?

(a) For a court order to be valid, the appropriate office must receive a certified copy on or after July 22, 1998, and before you die. The appropriate office is:

(1) If you are an employee, or a compensationer within the first 12 months of nonpay status, your employing agency;

(2) If you are insured as an annuitant or compensationer, OPM; and

(3) If you have ported Option B coverage, the Portability Office.

(b) If, within the stated time frames, the appropriate office receives conflicting court orders, entitling different persons to the same insurance, OFEGLI will pay benefits based on whichever court order was issued first.

§ 870.803 Can I designate a beneficiary?

(a) If you want benefits paid differently from the order of precedence, you must file a designation of beneficiary. *Exception:* If you have assigned your insurance, you cannot designate a beneficiary. Only your assignee(s) may designate beneficiaries.

(b) If there is a valid court order on file as described in § 870.802, you cannot designate a beneficiary (other than the person(s) named in the court order) unless:

(1) The person(s) named in the court order agrees in writing;

(2) The court order is modified so that the person previously named is no longer named, without naming a new person to receive the benefits. The appropriate office must receive a certified copy of the modified court order before you die. (If the court order is modified, but you do not designate a beneficiary, OFEGLI will pay benefits according to the order of precedence.); or

(3) The court order applies to only part of your insurance benefits. In this case, you may designate a beneficiary to receive the benefits that are not included under the court order. If you do not designate a beneficiary for these benefits, OFEGLI will pay according to the order of precedence.

§ 870.804 How do I make a designation?

(a) Unless you have assigned your insurance, no one except you may designate a beneficiary. No one may make a designation on your behalf. If you have assigned your insurance, no one except your assignee(s) may designate a beneficiary.

(b)(1) Your designation must be in writing. You must sign the designation, and 2 people must witness your signature and also sign the designation.

(2) You cannot name one (or both) of your witnesses as a beneficiary.

(3) If your employing office erroneously accepts a designation listing a beneficiary who is also a witness, that person is disqualified from receiving benefits under the designation.

(i) If that person is the only beneficiary listed, the designation is invalid. OFEGLI will pay benefits under your last valid designation. If you do not have a valid designation on file, OFEGLI will pay benefits to the next person(s) under the order of precedence.

(ii) If you have listed other beneficiaries, the designation may still be valid. In this case, the remaining beneficiaries will receive equal shares of the disqualified person's share of the benefits when you die.

(c) If you make a designation or a change of beneficiary in your will or any other document, and it does not meet the requirements of this section, it is not valid. OFEGLI will pay benefits as if you did not make a designation.

(d)(1) You (or your assignee(s)) may name any individual, firm, corporation, or legal entity as a beneficiary. *Exception:* You cannot designate an agency of the Federal or District of Columbia Government.

(2) You must designate percentages or fractions. You cannot designate dollar amounts. If you designate 2 or more beneficiaries, you may also designate a type of insurance to go to each beneficiary.

(e) Your designation may state that a beneficiary is entitled to the insurance benefits only if he/she survives you by a specified period of time (not more than 30 days). If that beneficiary does not survive for the specified period of time, OFEGLI will pay benefits as if that beneficiary had died before you.

§ 870.805 Where do I have to file my designation form?

(a)(1) If you are an employee, or a compensationer within the first 12 months of nonpay status, your agency employing office must receive your designation before you die.

(2) If you are insured as an annuitant or compensationer, OPM must receive your designation before you die.

(3) If you have ported Option B coverage, the Portability Office must receive your designation before you die.

(b) A faxed designation is valid if:

(1) The appropriate office, as stated in paragraph (a) of this section, receives the faxed designation before you die;

(2) The appropriate office receives the original designation within 30 days after receiving the faxed designation; and

(3) The original designation is identical to the faxed designation.

§ 870.806 Can I change my designation?

Yes. Unless you have assigned your insurance, or unless you are subject to the court order provisions stated in § 870.804, you may change your designation at any time. You cannot waive your right to change designated beneficiaries, and the right cannot be restricted in any way. You do not have to notify the previous beneficiary, and you do not have to have the previous beneficiary's approval.

§ 870.807 How long does my designation last?

(a) Your designation of beneficiary cancels automatically 31 days after your insurance stops, unless within those 31 days you are reemployed in a position that entitles you to FEGLI. *Exception:* If you port Option B, your designation remains in effect. In this case, if you return to Federal service, Basic and any Option A insurance acquired through returning to service is included in the existing designation.

(b) If you assign your insurance, your designation cancels automatically on the effective date of the assignment.

§ 870.808 How does OFEGLI pay Option C benefits if an eligible family member dies?

(a) If you have Option C and an eligible family member dies, OFEGLI pays benefits to you.

(b) If you are entitled to receive Option C benefits, but you die before OFEGLI makes the payment, OFEGLI will pay whoever is entitled to receive your Basic insurance benefits under the statutory order of precedence. If you assigned your insurance, OFEGLI will still follow the order of precedence for payment of Option C benefits in this situation, but will start with the second on the list (widow(er)).

Subpart I—Assignment

§ 870.901 Who is allowed to make an assignment?

(a) Effective July 10, 1984, section 208 of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. 98–353 (98 Stat. 355), allows Federal judges to assign their FEGLI coverage.

(b) Effective October 3, 1994, section 4 of Pub. L. 103–336 (108 Stat. 2661) allows all Federal employees, annuitants, and compensationers to assign their FEGLI coverage.

§ 870.902 What insurance can I assign?

(a) If you make an assignment, you assign your Basic, Option A, and Option B insurance. An assignment applies to all of this coverage; you cannot assign only part of your insurance.

(b) You cannot assign Option C.

(c) If you elected a living benefit under subpart K of this part, you may assign your remaining coverage.

§ 870.903 Who can I assign my insurance to?

(a) You may assign your insurance to one or more individuals, corporations, trusts, or other entities.

(b) You cannot name contingent assignees, in case your primary assignee dies before you do.

(c) If you assign your insurance to 2 or more assignees, you must state the percentage or fraction to go to each assignee. You cannot assign dollar amounts, and you cannot assign types of insurance.

(d) Once assigned, the value of your insurance increases or decreases automatically, as provided by this part. *Exception:* If you elected a partial living benefit before assigning the remainder of your insurance, the amount of your Basic insurance does not increase or decrease.

§ 870.904 Can I change or cancel my assignment?

No. An assignment is irrevocable. Once you have assigned your insurance, you cannot undo the assignment or change it in any way.

§ 870.905 How do I make an assignment?

(a) Only you may assign your insurance. No one may make an assignment on your behalf.

(b)(1) To assign your insurance, you must complete an approved assignment form. (Assignments submitted before November 28, 1986, were acceptable without an approved assignment form.) You must sign the form, and 2 people must witness your signature and also sign the form.

(2) You cannot assign your insurance to one of your witnesses.

(c) A court order may direct you to make an assignment to the person(s) named in the court order. For an assignment to be effective, you must follow the procedures in this section.

§ 870.906 Where do I have to file my assignment form?

(a) If you are an employee, or a compensationer within the first 12 months of nonpay status, you must submit the assignment form to your agency employing office.

(b) If you are insured as an annuitant or compensationer, you must submit the assignment form to OPM.

(c) If you have ported Option B coverage, you must submit the assignment form to the Portability Office.

§ 870.907 When is my assignment effective?

Your assignment is effective on the date the employing office receives your properly completed, signed, and witnessed assignment form.

§ 870.908 Can I elect more insurance after I make an assignment?

Yes. You have the right to elect insurance as described in subpart E of this part. Any Option A or Option B coverage that you elect is included automatically in your existing assignment.

§ 870.909 Can I cancel or reduce my insurance after I make an assignment?

(a) No. You cannot cancel or reduce your insurance after you make an assignment. The right to cancel or reduce your insurance transfers to the assignee(s).

(b) If there is more than 1 assignee, all assignees must agree to the cancellation or reduction.

§ 870.910 Who pays the premiums after I make an assignment?

You, the insured individual, still pay the premiums after you assign your insurance. The premiums are withheld from your pay, annuity, or compensation, the same as they were before you made the assignment.

§ 870.911 What happens when I retire or become insured as a compensationer?

(a)(1) If you are eligible to continue your insurance as an annuitant or compensationer, the assignment will continue.

(2) You will make the initial post-65 reduction election for Basic insurance and Option B.

(b)(1) Once you've made your initial post-65 reduction election for Basic, you cannot change it. However, unless you've elected a partial living benefit, your assignee(s) may change your post-65 reduction election as stated in subpart G of this part.

(2) Once you've made your initial post-65 reduction election for Option B:

(i) If you elected Full Reduction, only you may change to No Reduction, as stated in § 870.711.

(ii) If you elected No Reduction, only your assignee may change to Full Reduction, as stated in § 870.711.

(c)(1) Your assignee may choose to convert your insurance instead of continuing it when you become insured as an annuitant or compensationer.

(2) If there is more than one assignee, some assignees may choose to convert their part of your insurance instead of continuing it when you become insured as an annuitant or compensationer, and other assignees may choose to continue their part of your insurance.

(3) The amount of each type of continued insurance is determined by the total percentage of the shares of the assignees who choose to continue the coverage.

(d)(1) If you become reemployed in a position that entitles you to FEGLI, the insurance you get through your employment is included automatically in your existing assignment.

(2) The right to elect Option B as an employee rather than keeping it as an annuitant (see § 870.717(c)(3)) stays with you; it does not transfer to the

assignee(s). Any Option B coverage you elect as an employee is included in your existing assignment.

§ 870.912 What happens if my insurance terminates after I make an assignment?

(a)(1) If your insurance stops, each assignee has the right to convert all or a part of his/her share of your insurance. The conditions stated in subpart F of this part apply to your assignee(s).

(2) Any assignee who does not convert his/her share of your insurance loses all ownership of the insurance.

(b) When there is more than 1 assignee, the maximum amount of insurance each assignee may convert is determined by the dollar amount corresponding to the assignee's share of your total insurance. This amount will be rounded up to the next higher thousand.

(c)(1) Premiums for the converted insurance are based on your age and class of risk at the time your assignee converts.

(2) If an assignee converts your insurance, the assignee is responsible for paying the premiums on the converted coverage.

(d) If you have assigned your insurance, your employing office must notify your assignee(s) of the right to convert when your insurance terminates.

§ 870.913 How long does my assignment last?

(a) Your assignment cancels automatically 31 days after your insurance stops, unless within those 31 days you are reemployed in a position that entitles you to FEGLI. *Exception:* If you port Option B, your assignment remains in effect. In this case, if you return to Federal service, Basic insurance and any Option A or additional Option B insurance acquired through returning to service is included in the existing assignment.

(b) Your assignee has the right to assign your insurance to someone else, including assigning it back to you. If this happens, all the rights of the assignee revert to you.

§ 870.914 Can I designate a beneficiary after I've assigned my insurance?

No. When you assign your insurance, any designation of beneficiary you have on file cancels automatically. You cannot file a new designation. Only your assignee has the right to designate a beneficiary. The provisions of § 870.804 apply to your assignee(s).

§ 870.915 If I've assigned my insurance, who gets the life insurance benefits when I die?

(a) Each assignee may designate a beneficiary (or beneficiaries). An assignee may designate himself/herself as the primary beneficiary and name another contingent beneficiary(ies) in case the assignee dies before you.

(b) If your assignee does not designate a beneficiary, OFEGLI will pay benefits to your assignee when you die.

(c) If your assignee dies before you and did not designate a beneficiary, OFEGLI will pay benefits to your assignee's estate when you die.

§ 870.916 Current addresses.

Each assignee and each beneficiary of an assignee must keep the office where your assignment is filed informed of his/her current address.

Subpart J—Benefits for United States Hostages in Iraq and Kuwait and United States Hostages Captured in Lebanon

§ 870.1001 Purpose.

This subpart gives the conditions for life insurance coverage for certain hostages. The provisions for this coverage are in section 599C of Pub. L. 101–513 (104 Stat. 2035).

§ 870.1002 Special definitions for this subpart.

Hostage and *hostage status* have the meaning given in section 599C of Pub. L. 101–513 (104 Stat. 2035).

Pay period for individuals insured under this subpart means the pay period that the U.S. Department of State sets up.

§ 870.1003 Who is eligible for FEGLI under this subpart?

(a)(1) The U.S. State Department determines who is eligible for coverage.

(2) Those who are eligible for hostage coverage are not considered employees for the purpose of this part.

(b) Eligibility for insurance under this subpart depends on the availability of funds under section 599C(e) of Pub. L. 101–513 (104 Stat. 2035).

§ 870.1004 What is the amount of insurance for those eligible as hostages?

(a)(1) Section 599C(b)(2) of Pub. L. 101–513 (104 Stat. 2035) specifies a payment for these individuals. The BIA is the amount of this payment, rounded to the next higher $1,000, plus $2,000.

(2) Basic insurance includes AD&D coverage.

(b) These hostages are not eligible for Optional insurance.

§ 870.1005 What is the effective date of this coverage?

(a)(1) For hostages in Iraq and Kuwait coverage was effective August 2, 1990.

(2) For hostages captured in Lebanon coverage was effective June 1, 1982.

(b) The U.S. Department of State may set a later effective date.

§ 870.1006 How are the premiums paid?

(a) Section 599C of Pub. L. 101–513 provides funds for the FEGLI premiums.

(b) If the person is not insured for the full pay period, premiums are paid only for the days he/she is actually insured. The daily premium is the monthly premium multiplied by 12 and divided by 365.

(c) OPM may accept the premium payments in advance from a State Department appropriation, if it is necessary to fund the 12-month period beginning the earlier of:

(1) The day after hostilities or sanctions end; or

(2) The day after the person's hostage status ends.

(d) OPM will place any funds received under paragraph (c) of this section in an account set up for that purpose. OPM will make the deposit required under 5 U.S.C. 8714 from the account when the appropriate pay period occurs.

§ 870.1007 Can a person insured as a hostage cancel the insurance?

(a) A person insured under this subpart may cancel the insurance at any time by written request. The insured individual must request the cancellation. No one can make the request on the person's behalf.

(b) The cancellation is effective on the first day of the pay period after the pay period in which the U.S. Department of State receives the request.

(c) A person who cancels insurance under this section cannot get the insurance again, unless the State Department determines that it would be against equity and good conscience not to allow the person to be insured.

§ 870.1008 How are benefits paid when a person insured as a hostage dies?

When a person insured as a hostage dies, OFEGLI pays benefits according to the same statutory order of precedence that applies to other FEGLI coverage. A person insured under this subpart has the right to designate a beneficiary(ies); the provisions of subpart H of this part apply.

§ 870.1009 How long does the insurance continue?

(a) Unless the person cancels coverage earlier, insurance under this subpart stops:

(1) For hostages in Iraq and Kuwait, 12 months after hostage status ends; and

(2) For hostages captured in Lebanon, 60 months after hostage status ends.

(b) When his/her insurance terminates, the person gets the 31-day extension of coverage and the right to convert. (See subpart F of this part.)

§ 870.1010 State Department responsibilities.

(a) The U.S. Department of State serves as the ''employing office'' for persons insured under this subpart.

(b) The State Department must determine the eligibility of persons under this subpart. This includes determining whether a person is barred from FEGLI because of other life insurance, as provided in section 599C of Pub. L. 101–513 (104 Stat. 2035).

Subpart K—Living Benefits

§ 870.1101 Who is eligible for a living benefit?

Effective July 25, 1995, you may receive a living benefit if you are terminally ill, as defined in § 870.101. *Exception:* If you have assigned your insurance, you cannot elect a living benefit.

§ 870.1102 How much can I elect as a living benefit?

(a) Only Basic insurance is available for a living benefit. You cannot get Optional insurance as a living benefit.

(b)(1) If you are an employee, you may elect to receive either:

(i) A full living benefit, which is all of your Basic insurance; or

(ii) A partial living benefit, which is a portion of your Basic insurance, in a multiple of $1,000.

(2) If you are insured as an annuitant or compensationer, you may elect only a full living benefit. You cannot elect a partial living benefit.

(c) The amount of Basic insurance available for payment is based on your age 9 months from the date OFEGLI receives your application.

(d) The amount of Basic insurance you elect as a living benefit will be reduced by an actuarial amount representing the amount of interest lost to the Fund because of the early payment of benefits.

§ 870.1103 How do I apply for a living benefit?

(a)(1) You must request an application form directly from OFEGLI. Neither your employing office nor OPM has the form.

(2) You must complete the first part of the application and have your doctor complete the second part. You or your doctor must send the completed application directly to OFEGLI.

(b) Another person may apply for a living benefit on your behalf if all of the following conditions are met:

(1) You must be physically or mentally incapable of making an election;

(2) The applicant must have a power of attorney or court order authorizing him/her to elect a living benefit on your behalf; and

(3) The applicant must either be your sole beneficiary or have each beneficiary's written and signed consent.

(c) OFEGLI reviews the application, obtains certification from your employing office regarding the amount of your insurance, and verifies that you have not assigned your insurance. OFEGLI then determines whether you meet the requirements to elect a living benefit.

(d)(1) If OFEGLI needs additional information, it will contact you or your doctor.

(2) Under certain circumstances, OFEGLI may require a medical examination before making a decision. In this case, OFEGLI must pay for the medical exam.

§ 870.1104 What happens after OFEGLI approves my application?

(a) If OFEGLI approves your application, it sends you a check and an explanation of benefits.

(b) You can change your mind about electing a living benefit until you cash or deposit the check. If this happens, you must mark the check ''void'' and return it to OFEGLI.

(c) Your living benefit election is effective on the date you cash or deposit the check. After that date you cannot change your mind and revoke the election.

(d) Once you have cashed or deposited the check, OFEGLI sends an explanation of benefits to your employing office, so it can make the necessary changes in your premium withholdings.

(e) If you die before cashing or depositing the check, the payment must be returned to OFEGLI.

§ 870.1105 What if OFEGLI doesn't approve my application?

If OFEGLI does not approve your application, it will notify you and your employing office. OFEGLI's decision is not subject to administrative review or appeal, but you may submit additional medical information. You may also reapply at a later date if your situation changes.

§ 870.1106 What happens to the rest of my coverage after I elect a living benefit?

(a)(1) If you elect a full living benefit, your post-election BIA is $0. Withholdings for Basic insurance stop at the end of the pay period in which your living benefit election is effective. Your Basic AD&D coverage reduces to $0 on the effective date of your living benefit election.

(2) If you elect a partial living benefit, your post-election BIA is a reduced amount (see § 870.205). Your withholdings and the Government contribution for Basic insurance are based on the amount of your post-election BIA and are reduced at the end of the pay period in which your living benefit election is effective. Your Basic AD&D coverage reduces to equal your post-election BIA.

(b)(1) Your post-election BIA cannot change. Subsequent changes in pay will have no effect on the amount of your Basic insurance.

(2) If you retire or become insured as a compensationer after electing a partial living benefit, you must elect No Reduction for your Basic insurance.

(c) Electing a living benefit has no effect on your Optional insurance.

(d) After electing a living benefit, you may assign the remainder of your insurance.

(e) You may elect a living benefit only once. If you elect a partial living benefit, you cannot later elect a living benefit for some or all of your remaining Basic insurance.

§ 870.1107 What happens if I live longer than 9 months?

If you live longer than 9 months, you do not have to return the living benefit payment.

Subpart L—Portability

§ 870.1201 Portability permitted.

(a) Effective April 24, 1999, until April 24, 2002, you may port (keep) Option B coverage that would otherwise terminate.

(b) You cannot port Basic insurance, Option A, or Option C.

§ 870.1202 What are the eligibility requirements for portability?

(a) You are eligible to port your Option B if:

(1) Your coverage is terminating because you are separating or completing 12 months in nonpay status; and

(2) You meet the 5-year/all-opportunity requirement stated in § 870.701.

(b) If you have assigned your insurance, it is your assignee(s) who has(have) the right to port. Your

assignee(s) must pay the premiums for the ported coverage.

§ 870.1203 How much Option B can I port?

(a)(1) You may port the number of Option B multiples that meet the 5-year/all-opportunity requirement.

(2) You may also choose to port fewer multiples. If you do, any multiples that you do not port terminate, with the 31-day extension of coverage and right to convert.

(b)(1) If you port your coverage, you may reduce the number of multiples at any time. *Exception:* If you have assigned your insurance, only your assignee has the right to reduce the number of multiples.

(2) You cannot increase the number of multiples.

(c) If you port Option B, future salary changes have no effect on the amount of your coverage.

(d) The amount of your ported coverage reduces by 50% at the beginning of the 2nd month after you reach age 70. If you are already age 70 or older at the time you port your Option B, the reduction takes place the 2nd month after the effective date of your ported coverage.

§ 870.1204 What is the cost of the ported coverage?

(a)(1) Ported Option B costs the same as ''regular'' Option B. (See § 870.405(d).)

(2) In addition to the premium payments for Option B, you must pay a monthly administrative fee for ported coverage. OPM negotiates the amount of this administrative fee with the Portability Office.

(b) When your coverage reduces, as stated in § 870.1203(d), your premiums also reduce, based on the new amount of your coverage.

§ 870.1205 How do I port my coverage?

(a) If you are eligible to port your Option B, your employing office must notify you (or your assignee) in writing of the loss of coverage and your right to port. The employing office must do this either before or immediately after the event that causes your coverage to stop.

(b)(1) If you want to port your Option B, you must submit your request to the Portability Office. The Portability office must receive your request within 65 days after the date of the terminating event (79 days, if you live overseas).

(2) If you do not request portability within the required time frame, we consider that you have refused coverage.

§ 870.1206 Are there any extensions to the time limit for porting?

(a) The time limit may be extended up to 6 months after the date of the terminating event. To qualify, you must demonstrate to the Portability Office that:

(1) Your employing office did not give you the required notification and you were not aware of the time limit for porting your Option B; or

(2) You were not able to port on time for reasons beyond your control.

(b) If the Portability Office approves your request to port, you must port within 31 days of that approval.

§ 870.1207 When is my ported coverage effective?

Your ported coverage is effective the day after your coverage as an employee stops.

§ 870.1208 What about designations, assignments, and court orders?

(a)(1) If you have a valid designation of beneficiary on file at the time you port your Option B, that designation remains in effect for the ported coverage.

(2) If you want to designate a beneficiary after you have ported your coverage, you must submit the designation form to the Portability Office.

(3) If you return to Federal service, any valid designation of beneficiary remains in effect.

(b)(1) If you have assigned your coverage, and your assignee ports your Option B, that assignment remains in effect.

(2) If you want to make an assignment after you have ported your coverage, you must submit the assignment form to the Portability Office.

(3) If you return to Federal service, any valid assignment remains in effect. Basic insurance and any Option A and additional Option B coverage you get through your employment is included automatically in your existing assignment.

(c)(1) If your employing office received a valid court order on or after July 22, 1998, that court order remains valid for your ported coverage.

(2) Anyone wanting to submit a court order relating to your ported coverage must submit it to the Portability Office.

(3) If you return to Federal service, any valid court order on file remains in effect.

(d) When you submit a request to port your Option B, your employing office must send the originals of all designations, assignments, and court orders on file to the Portability Office.

§ 870.1209 Can I cancel my ported coverage?

(a) You may cancel your ported coverage or reduce the number of multiples at any time. *Exception:* If you have assigned your insurance, only your assignee may cancel or reduce your coverage.

(b) If you do not make a premium payment on time, the Portability Office will send you a notice stating that your coverage will continue only if you make the payment within 15 days after receiving the notice (45 days, if you live overseas). We consider that you received the notice 5 days after the date on the notice (19 days, if you live overseas). If you do not make the payment within this time frame, your Option B coverage cancels.

(c) If your ported coverage cancels, whether voluntarily or for nonpayment, you do not get the 31-day extension of coverage or the right to convert.

§ 870.1210 How long does my ported coverage last?

Your ported coverage stops at the earlier of:

(a) April 24, 2002. You get the 31-day extension of coverage and the right to convert, as stated in subpart F of this part.

(b) The beginning of the 2nd calendar month after you reach 80. If you are already age 80 or older at the time you port your Option B, your coverage stops at the beginning of the 2nd month after the effective date of the ported coverage. You get the 31-day extension of coverage and the right to convert, as stated in subpart F of this part.

§ 870.1211 What happens if I come back to work?

(a)(1) When you return to active Federal service, your agency must notify the Portability Office.

(2) The Portability Office must terminate your ported coverage and send the originals of all designations, assignments, and court orders to your new employing office.

(b) You will get back the number of multiples of Option B that you had before the terminating event.

Exceptions:

(1) If you cancel a multiple or multiples of Option B at the time you port or after you port, you will get back only the number of multiples remaining.

(2) If you cancel your Option B coverage, or if your coverage cancels for nonpayment of premiums, you will not get back any Option B coverage.

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Federal Register

Friday,
October 27, 2000

Part V

Library of Congress

Copyright Office

37 CFR Part 201

Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies; Final Rule

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 99–7D]

Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

AGENCY: Copyright Office, Library of Congress.

ACTION: Final Rule.

SUMMARY: This rule designates the classes of copyrighted works that the Librarian of Congress has determined shall be subject to exemption from the prohibition against circumvention of a technological measure that effectively controls access to a work protected under title 17 of the U.S. Code. In title I of the Digital Millennium Copyright Act, Congress established that this prohibition against circumvention will become effective October 28, 2000. The same legislation directed the Register of Copyrights to conduct a rulemaking procedure and to make recommendations to the Librarian as to whether any classes of works should be subject to exemptions from the prohibition against circumvention. The exemptions set forth in this rule will be in effect until October 28, 2003.

EFFECTIVE DATE: October 28, 2000.

FOR FURTHER INFORMATION CONTACT: Charlotte Douglass or Robert Kasunic, Office of the General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Telephone (202) 707–8380; telefax (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Recommendation of the Register of Copyrights

I. Background

A. Legislative Requirements for Rulemaking Proceeding

The WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) require that Contracting Parties provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that authors or other copyright owners (or, in the case of the WPPT, performers and producers of phonograms) use in connection with the exercise of their rights and that restrict acts which they have not authorized and are not permitted by law. [1]

In fulfillment of these treaty obligations, on October 28, 1998, the United States enacted the Digital Millennium Copyright Act (''DMCA''), Pub. L. 105–304 (1998). Title I of the Act added a new Chapter 12 to Title 17 U.S.C., which among other things prohibits circumvention of access control technologies employed by or on behalf of copyright owners to protect their works. Specifically, new subsection 1201(a)(1)(A) provides, inter alia, that ''No person shall circumvent a technological measure that effectively controls access to a work protected under this title.'' Congress found it appropriate to modify the prohibition to assure that the public will have continued ability to engage in noninfringing uses of copyrighted works, such as fair use. See the Report of the House Committee on Commerce on the Digital Millennium Copyright Act of 1998, H.R. Rep. No. 105–551, pt. 2, at 36 (1998) (hereinafter Commerce Comm. Report). Subparagraph (B) limits this prohibition. It provides that the prohibition against circumvention ''shall not apply to persons who are users of a copyrighted work which is in a particular class of works, if such persons are, or are likely to be in the succeeding 3-year period, adversely affected by virtue of such prohibition in their ability to make noninfringing uses of that particular class of works under this title'' as determined in this rulemaking. This prohibition on circumvention becomes effective on October 28, 2000, two years after the date of enactment of the DMCA.

During the 2-year period between the enactment and the effective date of the provision, the Librarian of Congress must make a determination as to classes of works exempted from the prohibition. This determination is to be made upon the recommendation of the Register of Copyrights in a rulemaking proceeding. The determination thus made will remain in effect during the succeeding three years. In making her recommendation, the Register of Copyrights is to consult with the Assistant Secretary for Communications and Information of the Department of Commerce and report and comment on the Assistant Secretary's views. 17 U.S.C. 1201(a)(1)(C).

A more complete explanation of the development of the legislative requirements is set out in the Notice of Inquiry published on November 24, 1999, 64 FR 66139, and is also available on the Copyright Office's website at : http://www.loc.gov/copyright/1201/anticirc.html. See also the discussion in section III.A. below.

B. Responsibilities of Register of Copyrights and Librarian of Congress

The prohibition against circumvention is subject to delayed implementation in order to permit a determination whether users of particular classes of copyrighted works are likely to be adversely affected by the prohibition in their ability to make noninfringing uses. By October 28, 2000, upon the recommendation of the Register of Copyrights in a rulemaking proceeding, the Librarian of Congress must determine whether to exempt certain classes of works (which he must identify) from the application of the prohibition against circumvention during the next three years because of such adverse effects.

The Register was directed to conduct a rulemaking proceeding, soliciting public comment and consulting with the Assistant Secretary of Commerce for Communications and Information, and then to make a recommendation to the Librarian, who must make a determination whether any classes of copyrighted works should be exempt from the statutory prohibition against circumvention during the three years commencing on that date.

The primary responsibility of the Register and the Librarian in this respect is to assess whether the implementation of technological protection measures that effectively control access to copyrighted works (hereinafter ''access control measures'') is diminishing the ability of individuals to use copyrighted works in ways that are otherwise lawful. Commerce Comm. Report, at 37. As examples of technological protection measures in effect today, the Commerce Committee offered the use of ''password codes'' to control authorized access to computer programs and encryption or scrambling of cable programming, videocassettes, and CD–ROMs. *Id.*

The prohibition becomes effective on October 28, 2000, and any exemptions to that prohibition must be in place by that time. Although it is difficult to measure the effect of a future prohibition, Congress intended that the Register solicit input that would enable consideration of a broad range of current or likely future adverse impacts. The

[1] The treaties were adopted on December 20, 1996 at a World Intellectual Property Organization (WIPO) Diplomatic Conference on Certain Copyright and Neighboring Rights Questions. The United States ratified the treaties in September, 1999. The treaties will go into effect after 30 instruments of ratification or accession by States have been deposited with the Director General of WIPO.

nature of the inquiry is delineated in the statutory areas to be examined, as set forth in section 1201(a)(1)(C):

(i) The availability for use of copyrighted works;

(ii) The availability for use of works for nonprofit archival, preservation, and educational purposes;

(iii) The impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research;

(iv) The effect of circumvention of technological measures on the market for or value of copyrighted works; and

(v) Such other factors as the Librarian considers appropriate.

II. Solicitation of Public Comments and Hearings

On November 24, 1999, the Office initiated the rulemaking procedure with publication of a Notice of Inquiry. 64 FR 66139. The Notice of Inquiry requested written comments from all interested parties, including representatives of copyright owners, educational institutions, libraries and archives, scholars, researchers and members of the public. The Office devoted a great deal of attention in this Notice to setting out the legislative parameters and developing questions related to the criteria Congress had established. The Office was determined to make the comments it received available immediately in order to elicit a broad range of public comment; therefore, it stated a preference for submission of comments in certain electronic formats. *Id.* In response to some commenters' views that the formats permitted were not sufficient, the Office expanded the list of formats in which comments could be submitted. 65 FR 6573 (February 10, 2000). In the same document, the Office extended the comment period: comments would be due by February 17, 2000 and reply comments by March 20, 2000. On March 17, the Office extended the reply comment period to March 31; scheduled hearings to take place in Washington, DC on May 2–4 and in Palo Alto, California, at Stanford University on May 18–19; and set a June 23, 2000 deadline for submission of post-hearing comments. 65 FR 14505 (March 17, 2000). All of these notices were published not only in the **Federal Register**, but also on the Office's website.

In response to the Notice of Inquiry, the Office received 235 initial comments and 129 reply comments. Thirty-four witnesses representing over 50 groups testified at five days of hearings held in either Washington, DC or Palo Alto, California. The Office placed all initial comments, reply comments, optional written statements of the witnesses and the transcripts of the two hearings on its website shortly after their receipt. Following the hearings, the Office received 28 post-hearing comments, which were also posted on the website. All of these commenters and witnesses are identified in the indexes that appear on the Office's website.

The comments received represent a broad perspective of views ranging from representatives or individuals who urged there should be broad exemptions to those who opposed any exemption; they also included a number of comments about various other aspects of the Digital Millennium Copyright Act. The Copyright Office has now exhaustively reviewed and analyzed the entire record, including all of the comments and the transcripts of the hearings in order to determine whether any class of copyrighted works should be exempt from the prohibition against circumvention during the next three years.[2]

III. Discussion

A. The Purpose and Focus of the Rulemaking

1. Purpose of the Rulemaking

As originally reported out of the Senate Judiciary Committee on May 11, 1998, S. Rep. No. 105–190 (1998), and the House Judiciary Committee on May 22, 1998, H.R. Rep. No. 105–551, pt. I (1998), section 1201(a)(1) consisted of only one sentence—what is now the first sentence of section 1201(a)(1): ''No person shall circumvent a technological measure that effectively controls access to a work protected under this title.'' Section 1201(a)(2), like the provision finally enacted, prohibited the manufacture, importation, offering to the public, providing or otherwise trafficking in any technology, product, service, device, or component to circumvent access control measures. Section 1201(a) thus addressed ''access control'' measures, prohibiting both the conduct of circumventing those measures and devices that circumvent them. Thus, section 1201(a) prohibits both the conduct of circumventing access control measures and trafficking in products, services and devices that circumvent access control measures.

In addition to section 1201(a)(1)'s prohibition on circumvention of access control measures, section 1201 also addressed circumvention of a different type of technological measure. Section 1201(b), in the versions originally reported by the House and Senate Judiciary Committees and in the statute finally enacted, prohibited the manufacture, importation, offering to the public, providing or otherwise trafficking in any technology, product, service, device, or component to circumvent protection afforded by a technological measure that effectively protects a right of a copyright owner under title 17 in a copyrighted work. The type of technological measure addressed in section 1201(b) includes copy-control measures and other measures that control uses of works that would infringe the exclusive rights of the copyright owner. They will frequently be referred to herein as copy controls. But unlike section 1201(a), which prohibits both the conduct of circumvention and devices that circumvent, section 1201(b) does not prohibit the conduct of circumventing copy control measures. The prohibition in section 1201(b) extends only to devices that circumvent copy control measures. The decision not to prohibit the conduct of circumventing copy controls was made, in part, because it would penalize some noninfringing conduct such as fair use.

In the House of Representatives, the DMCA was sequentially referred to the Committee on Commerce after it was reported out of the Judiciary Committee. The Commerce Committee was concerned that section 1201, in its original form, might undermine Congress' commitment to fair use. Commerce Comm. Report, at 35. While acknowledging that the growth and development of the Internet has had a significant positive impact on the access of students, researchers, consumers, and the public at large to information and that a ''plethora of information, most of it embodied in materials subject to copyright protection, is available to individuals, often for free, that just a few years ago could have been located and acquired only through the expenditure of considerable time, resources, and money,'' *Id.*, the Committee was concerned that ''marketplace realities may someday dictate a different outcome, resulting in less access, rather than more, to copyrighted materials that are important to education, scholarship, and other socially vital endeavors.'' *Id.* at 36. Possible measures that might lead to

[2] In referring to the comments and hearing materials, the Office will use the following abbreviations: C-Comment, R-Reply Comment, PH-Post Hearing Comments, T + speaker and date—Transcript (ex. ''T Laura Gasaway, 5/18/00'') and WS + speaker—Written statements (ex. ''WS Vaidhyanathan''). Citations to page numbers in hearing transcripts are to the hard copy transcripts at the Copyright Office. For the hearings in Washington, DC, the pagination of those transcripts differs from the pagination of the versions of the transcript available on the Copyright Office website.

such an outcome included the elimination of print or other hard-copy versions, permanent encryption of all electronic copies and adoption of business models that restrict distribution and availability of works. The Committee concluded that ''[i]n this scenario, it could be appropriate to modify the flat prohibition against the circumvention of effective technological measures that control access to copyrighted materials, in order to ensure that access for lawful purposes is not unjustifiably diminished.'' *Id.*

In order to address such possible developments, the Commerce Committee proposed a modification of section 1201 which it characterized as a '' 'fail-safe' mechanism.'' *Id.* As the Committee Report describes it, ''This mechanism would monitor developments in the marketplace for copyrighted materials, and allow the enforceability of the prohibition against the act of circumvention to be selectively waived, for limited time periods, if necessary to prevent a diminution in the availability to individual users of a particular category of copyrighted materials.'' *Id.*

The ''fail-safe'' mechanism is this rulemaking. In its final form as enacted by Congress, slightly modified from the mechanism that appeared in the version of the DMCA reported out of the Commerce Committee, the Register is to conduct a rulemaking proceeding and, after consulting with the Assistant Secretary for Communications and Information of the Department of Commerce, recommend to the Librarian whether he should conclude ''that persons who are users of a copyrighted work are, or are likely to be in the succeeding 3-year period, adversely affected by the prohibition under [section 1201(a)(1)(A)] in their ability to make noninfringing uses under [Title 17] of a particular class of copyrighted works.'' 17 U.S.C. 1201(a)(1)(C). ''The Librarian shall publish any class of copyrighted works for which the Librarian has determined, pursuant to the rulemaking conducted under subparagraph (C), that noninfringing uses by persons who are users of a copyrighted work are, or are likely to be, adversely affected, and the prohibition contained in subparagraph (A) shall not apply to such users with respect to such class of works for the ensuing 3-year period.'' 17 U.S.C. 1201(a)(1)(C).

The Commerce Committee offered additional guidance as to the task of the Register and the Librarian in this rulemaking. ''The goal of the proceeding is to assess whether the implementation of technological protection measures that effectively control access to copyrighted works is adversely affecting the ability of individual users to make lawful uses of copyrighted works * * *. The primary goal of the rulemaking proceeding is to assess whether the prevalence of these technological protections, with respect to particular categories of copyrighted materials, is diminishing the ability of individuals to use these works in ways that are otherwise lawful.'' Commerce Comm. Report, at 37. Accord: Staff of House Committee on the Judiciary, 105th Cong., Section-By-Section Analysis of H.R. 2281 as Passed by the United States House of Representatives on August 4, 1998, (hereinafter House Manager's Report) (Rep. Coble)(Comm. Print 1998), at 6. The Committee observed that the effective date of section 1201(a)(1) was delayed for two years in order ''to allow the development of a sufficient record as to how the implementation of these technologies is affecting availability of works in the marketplace for lawful uses.'' Commerce Comm. Report, at 37.

Thus, the task of this rulemaking appears to be to determine whether the availability and use of access control measures has already diminished or is about to diminish the ability of the public to engage in the lawful uses of copyrighted works that the public had traditionally been able to make prior to the enactment of the DMCA. As the Commerce Committee Report stated, in examining the factors set forth in section 1201(a)(1)(C), the focus must be on ''whether the implementation of technological protection measures (such as encryption or scrambling) has caused adverse impact on the ability of users to make lawful uses.'' *Id.*

2. The Necessary Showing

The language of section 1201(a)(1) does not offer much guidance as to the respective burdens of proponents and opponents of any classes of works to be exempted from the prohibition on circumvention. Of course, it is a general rule of statutory construction that exemptions must be construed narrowly in order to preserve the purpose of a statutory provision, and that rule is applied in interpreting the copyright law. *Tasini* v. *New York Times Co.*, 206 F.3d 161, 168 (2d Cir. 2000). Moreover, the burden is on the proponent of the exemption to make the case for exempting any particular class of works from the operation of section 1201(a)(1). See 73 Am. Jur. 2d 313 (1991) (''[s]tatutes granting exemptions from their general operation [to] be strictly construed, and any doubt must be resolved against the one asserting the exemption.'') Indeed, the House Commerce Committee stated that ''The regulatory prohibition is *presumed to apply* to any and all kinds of works, including those as to which a waiver of applicability was previously in effect, unless, and until, the Secretary makes a new determination that the *adverse impact criteria have been met* with respect to a particular class and therefore issues a new waiver.'' Commerce Comm. Report, at 37 (emphasis added).[3]

The legislative history makes clear that a determination to exempt a class of works from the prohibition on circumvention must be based on a determination that the prohibition has a substantial adverse effect on noninfringing use of that particular class of works. The Commerce Committee noted that the rulemaking proceeding is to focus on ''distinct, verifiable, and measurable impacts, and should not be based upon de minimis impacts.'' Commerce Comm. Report, at 37. ''If the rulemaking has produced insufficient evidence to determine whether there have been adverse impacts with respect to particular classes of copyrighted works, the circumvention prohibition should go into effect with respect to those classes.'' *Id.* at 38. Similarly, the House Manager's Report stated that ''[t]he focus of the rulemaking proceeding must remain on whether the prohibition on circumvention of technological protection measures (such as encryption or scrambling) has caused any substantial adverse impact on the ability of users to make non-infringing uses,'' and suggested that ''mere inconveniences, or individual cases * * * do not rise to the level of a substantial adverse impact.'' House Manager's Report, at 6.[4] See also *Connecticut Department of Public Utility Control* v. *Federal Communications Commission*, 78 F.3d 842, 851 (2d Cir. 1996) (''It is reasonable

[3] The Commerce Committee proposal would have placed responsibility for the rulemaking in the hands of the Secretary of Commerce. As finally enacted, the DMCA shifted that responsibility to the Librarian, upon the recommendation of the Register.

[4] Some commenters have suggested that the House Manager's Report is entitled to little deference as legislative history. See, *e.g.,* PH18, p. 3. However, because that report is consistent with the Commerce Committee Report, there is no need in this rulemaking to determine whether the Manager's Report is entitled to less weight than the Commerce Committee Report. Some critics of the Manager's Report have objected to its statement that the focus of this proceeding should be on whether there is a ''substantial adverse impact'' on noninfringing uses. However, they have failed to explain how this statement is anything other than another way of saying what the Commerce Committee said when it said the determination should be based on ''distinct, verifiable, and measurable impacts, and should not be based upon de minimis impacts.''

to characterize as 'substantial' the burden faced by a party seeking an exemption from a general statutory rule'').

Although future adverse impacts may also be considered, the Manager's Report states that ''the determination should be based upon anticipated, rather than actual, adverse impacts only in extraordinary circumstances in which the evidence of likelihood of future adverse impact during that time period is highly specific, strong and persuasive. Otherwise, the prohibition would be unduly undermined.'' *Id.* Although the Commerce Committee Report does not state how future adverse impacts are to be evaluated (apart from a single reference stating that in categories where adverse impacts have occurred or ''are likely to occur,'' an exemption should be made, Commerce Comm. Report at 38), the Committee's discussion of ''distinct, verifiable and measurable impacts'' suggests that it would require a similar showing with respect to future adverse impact.

The legislative history also requires the Register and Librarian to disregard any adverse effects that are caused by factors other than the prohibition against circumvention. The House Manager's Report is instructive:

> The focus of the rulemaking proceeding must remain on whether the prohibition on circumvention of technological protection measures (such as encryption or scrambling) has caused any substantial adverse impact on the ability of users to make non-infringing uses. Adverse impacts that flow from other sources * * * or that are not clearly attributable to such a prohibition, are outside the scope of the rulemaking.

House Manager's Report, at 6. The House Commerce Committee came to a similar conclusion, using similar language. Commerce Comm. Report, at 37.

In fact, some technological protection measures may mitigate adverse effects. The House Manager's Report notes that:

> In assessing the impact of the implementation of technological measures, and of the law against their circumvention, the rule-making proceedings should consider the positive as well as the adverse effects of these technologies on the availability of copyrighted materials. The technological measures—such as encryption, scrambling, and electronic envelopes—that this bill protects can be deployed, not only to prevent piracy and other economically harmful unauthorized uses of copyrighted materials, but also to support new ways of disseminating copyrighted materials to users, and to safeguard the availability of legitimate uses of those materials by individuals.

House Manager's Report, at 6.

Another mitigating factor may arise when a work as to which the copyright owner has instituted a technological control is also available in formats that are not subject to technological protections. For example, a work may be available in electronic format only in encrypted form, but may also be available in traditional hard copy format which has no such technological restrictions on access. The availability without restriction in the latter format may alleviate any adverse effect that would otherwise result from the technological controls utilized in the electronic format. The availability of works in such other formats is to be considered when exemptions are fashioned. *Id.* at 7.

3. Determination of ''Class of Works''

One of the key issues discussed in comments and testimony was how a ''class'' of works is to be defined. The Office's initial notice of inquiry highlighted this issue, asking for comments from the public on the criteria to be used in determining what a ''class of works'' is and on whether works could be classified in part based on the way in which they are being used. See questions 16, 17 and 23, 64 FR at 66143. A joint submission by a number of library associations took the position that the Librarian should adopt a "'function-based'' definition of classes of works.'' C162, p. 32. The same submission stated that ''the class of works should be defined, in part, according to the ways they are being used because that is precisely how the limitations on the otherwise exclusive rights of copyright holders are phrased,'' *Id.,* p. 36, and concluded that ''all categories of copyrighted works should be covered by this rulemaking.'' *Id.,* p. 38. In contrast, a coalition of organizations representing copyright owners argued for a narrower approach, rejecting a focus on particular types of uses of works or on particular access control technologies. R112, p. 10. One association of copyright owners argued that a ''class'' should not be defined by reference to any particular medium (such as digital versatile discs, or DVD's), but rather by reference to ''a type or types of works.'' R59, p. 8. Many representatives of copyright owners repeated the legislative history that ''the 'particular class of copyrighted works' be a narrow and focused subset of the broad categories of works of authorship than is [sic] identified in section 102 of the Copyright Act (17 U.S.C. 102).'' *See, e.g., Id.,* (quoting Commerce Comm. Report, at 38). A representative of a major copyright owner took the position that ''defining 'classes' of works is neither feasible nor appropriate'' and that ''[b]efore there is any movement in the direction of exempting certain works or 'classes' of works from the prohibition against circumvention, those who support such exemption should come forward with proof that users who desire to make non-infringing uses or avail themselves of the fair use defense are prevented from doing so by the technological protections.'' C43, p.6.

Based on a review of the statutory language and the legislative history, the view that a ''class'' of works can be defined in terms of the status of the user or the nature of the intended use appears to be untenable. Section 1201(a)(1)(B) refers to ''a copyrighted work which is in a particular class of works.'' Section 1201(a)(1)(C) refers to ''a particular class of copyrighted works.'' Section 1201(a)(1)(D) ''any class of copyrighted works.'' This statutory language appears to require that the Librarian identify a ''class of works'' based upon attributes of the works themselves, and not by reference to some external criteria such as the intended use or users of the works. The dictionary defines ''class'' as ''a group, set or kind sharing common attributes.'' Webster's New Collegiate Dictionary 211 (1995).

Moreover, the phrase ''class of works'' connotes that the common attributes relate to the nature of authorship in the works. Although the Copyright Act does not define ''work,'' the term is used throughout the copyright law to refer to a work of authorship, rather than to a material object on which the work appears or to the readers or users of the work. *See, e.g.,* 17 U.S.C. 102(a) (''Copyright protection subsists, in accordance with this title, in original *works of authorship* fixed in any tangible medium of expression, * * *) (emphasis added) and the catalog of the types of works protected by copyright set forth in section 102(a)(1)–(8) (''literary works,'' ''musical works,'' ''dramatic works,'' *etc.*).

Nevertheless, the statutory language is arguably ambiguous, and one could imagine an interpretation of section 1201(a)(1) that permitted a class of works to be defined in terms of criteria having nothing to do with the intrinsic qualities of the works. In such a case, resort to legislative history might clarify the meaning of the statute. In this case, the legislative history appears to leave no other alternative than to interpret the statute as requiring a ''class'' to be defined primarily, if not exclusively, by reference to attributes of the works themselves.

The Commerce Committee Report addressed the issue of determining a class of works:

The issue of defining the scope or boundaries of a ''particular class'' of copyrighted works as to which the implementation of technological protection measures has been shown to have had an adverse impact is an important one to be determined during the rulemaking proceedings. In assessing whether users of copyrighted works have been, or are likely to be adversely affected, the Secretary shall assess users' ability to make lawful uses of works ''within each particular class of copyrighted works specified in the rulemaking.'' The Committee intends that the ''particular class of copyrighted works'' be a narrow and focused subset of the broad categories of works of authorship than [sic] is identified in section 102 of the Copyright Act (17 U.S.C. 102).

Commerce Comm. Report, at 38.[5]

A ''narrow and focused subset of the broad categories of works of authorship * * * identified in section 102'' presumably must use, as its starting point, the categories of authorship set forth in section 102: literary works; musical works; dramatic works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; and architectural works.

Moreover, the Commerce Committee Report states that the task in this rulemaking proceeding is to determine whether the prevalence of access control measures, ''with respect to *particular categories* of copyrighted materials, is diminishing the ability of individuals to use these works in ways that are otherwise lawful.'' Commerce Comm. Report, at 37 (emphasis added). In fact, the Report refers repeatedly to ''categories'' of works in connection with the findings to be made in this rulemaking. *See Id.,* at 36 (''individual users of a particular category of copyrighted materials'') (''whether enforcement of the regulation should be temporarily waived with regard to particular categories of works'') (''any particular category of copyrighted materials'') (''assessment of adverse impacts on particular categories of works''), and 38 (''Only in categories as to which the Secretary finds that adverse impacts have occurred''). Because the term ''category'' of works has a well-understood meaning in the copyright law, referring to the categories set forth in section 102, the conclusion is inescapable that the starting point for any definition of a ''particular class'' of works in this rulemaking must be one of the section 102 categories.[6]

The views of the Judiciary Committee are in accord with those expressed in the Commerce Committee Report. The House Manager's Report uses very similar words to describe how a ''class of works'' is to be determined:

Deciding the scope or boundaries of a ''particular class'' of copyrighted works as to which the prohibition contained in section 1201(a)(1) has been shown to have had an adverse impact is an important issue to be determined during the rulemaking proceedings. The illustrative list of categories appearing in section 102 of Title 17 is only a starting point for this decision. For example, the category of ''literary works'' (17 USC 102(a)(1)) embraces both prose creations such as journals, periodicals or books, and computer programs of all kinds. It is exceedingly unlikely that the impact of the prohibition on circumvention of access control technologies will be the same for scientific journals as it is for computer operating systems; thus, these two categories of works, while both ''literary works,'' do not constitute a single ''particular class'' for purposes of this legislation. Even within the category of computer programs, the availability for fair use purposes of PC-based business productivity applications is unlikely to be affected by laws against circumvention of technological protection measures in the same way as the availability for those purposes of videogames distributed in formats playable only on dedicated platforms, so it is probably appropriate to recognize different ''classes'' here as well.

House Manager's Report, at 7.

The House Manager's Report continues:

At the same time, the Secretary should not draw the boundaries of ''particular classes'' too narrowly. For instance, the section 102 category ''motion pictures and other audiovisual works'' may appropriately be subdivided, for purposes of the rulemaking, into classes such as ''motion pictures,'' ''television programs,'' and other rubrics of similar breadth. However, it would be inappropriate, for example, to subdivide overly narrowly into particular genres of motion pictures, such as Westerns, comedies, or live action dramas. Singling out specific types of works by creating in the rulemaking process ''particular classes'' that are too narrow would be inconsistent with the intent of this bill.

Id.

The conclusion to be drawn from the legislative history is that the section 102 categories of works are, at the very least, the starting point for any determination of what a ''particular class of work'' might be. That is not to say that a ''class'' of works must be identical to a ''category.'' In fact, that usually will not be the case. A ''class'' of works might include works from more than one category of works; one could imagine a ''class'' of works consisting of certain sound recordings and musical compositions, for example. More frequently, a ''class'' would constitute some subset of a section 102 category, such as the Judiciary Committee's example of ''television programs.''

A rigid adherence to defining ''class'' solely by reference to section 102 categories or even to inherent attributes of the works themselves might lead to unjust results in light of the fact that the entire ''class'' must be exempted from section 1201(a)(1)'s anticircumvention provision if the required adverse impact is demonstrated. For example, if a showing had been made that users of motion pictures released on DVD's are adversely affected in their ability to make noninfringing uses of those works, it would be unfortunate if the Librarian's only choice were to exempt motion pictures. Limiting the class to ''motion pictures distributed on DVD's,'' or more narrowly to ''motion pictures distributed on DVD's using the content scrambling system of access control'' would be a more just '' and permissible '' classification. Such a classification would begin by reference to attributes of the works themselves, but could then be narrowed by reference to the medium on which the works are distributed, or even to the access control measures applied to them. But classifying a work solely by reference to the medium on which the work appears, or the access control measures applied to the work, seems to be beyond the scope of what ''particular class of work'' is intended to be. And classifying a work by reference to the type of user or use (*e.g.,* libraries, or scholarly research) seems totally impermissible when administering a statute that requires the Librarian to create exemptions based on a ''particular class of works.'' If Congress had wished to provide for exemptions based on the status of the user or the nature of the use—criteria that would be very sensible—Congress could have said so clearly. The fact that the issue of noninfringing uses was before Congress and the fact that Congress clearly was seeking, in section 1201, to create exemptions that would permit noninfringing uses, make it clear that

[5] A leading treatise draws the following conclusion from this language:

It would seem, therefore, that the language should be applied to discrete subgroups. If users of physics textbooks or listeners to Baroque concerti, for example, find themselves constricted in the new Internet environment, then some relief will lie. If, on the other hand, the only unifying feature shared by numerous disgruntled users is that each is having trouble accessing copyrighted works, albeit of different genres, then no relief is warranted. 1 Nimmer on Copyright § 12A.03[A][[2][b] (Copyright Protection Systems Special Pamphlet).

[6] The legislative history of the Copyright Act of 1976 supports the conclusion that there is a close relation between the section 102 categories and a ''class'' of work. The authoritative report of the House Judiciary Committee, in discussing the section 102 categories of works, used the term ''class'' as a synonym for ''category.'' See H.R. Rep. No. 94–1476, at 53 (1976).

Congress had every opportunity and motive to clarify that such uses could be ingredients of the definition of ''class'' if that was what Congress intended. Yet the fact that Congress selected language in the statute and legislative history that avoided suggesting that classes of works could be defined by reference to users or uses is strong evidence that such classification was not within Congress' contemplation.

In this rulemaking, exemptions for two classes of works are recommended. The first class, ''Compilations consisting of lists of websites blocked by filtering software applications,'' fits comfortably within the approach to classification outlined herein. The second class, ''Literary works, including computer programs and databases, protected by access control mechanisms that fail to permit access because of malfunction, damage or obsoleteness,'' is a somewhat less comfortable fit. It includes all literary works (a section 102 category) and specifically mentions two subclasses of literary works, but narrows the exemption by reference to attributes of the technological measures that control access to the works. Such classification probably reaches the outer limits of a permissible definition of ''class'' under the approach adopted herein.

B. Consultation With Assistant Secretary of Commerce for Communications and Information

As is required by section 1201(a)(1)(C), the Register has consulted with the Assistant Secretary for Communications and Information in the Department of Commerce. The Assistant Secretary is the Administrator of the National Telecommunciations and Information Administration (NTIA). Discussions with the Assistant Secretary and the NTIA staff have taken place throughout this rulemaking process. In furtherance of the consultative process, on September 29, 2000, the Assistant Secretary presented a letter to the Register detailing his views. That letter has been forwarded to the Librarian. After full and thorough consideration of and discussions with the Assistant Secretary's office on these views, the Register includes the following report and comment on the Assistant Secretary's perspective in this recommendation to the Librarian.

The Assistant Secretary stated that his principal concern is to ensure that the Librarian will preserve fair use principles in this new digital age. The concerns expressed in his letter quoted from and restated many of the concerns that were presented in the House Commerce Committee Report. The Assistant Secretary noted that the Commerce Committee was concerned that the anticircumvention prohibition of section 1201(a)(1) might have adverse consequences on fair uses of copyrighted works protected by technological protection measures, particularly by librarians and educators. He echoed the fears of the Commerce Committee that a legal framework may be developing that would ''inexorably create a pay-per-use society.'' He stated that the ''right'' to prohibit circumvention should be qualified in order to maintain a balance between the interests of content creators and information users, by means of carefully drawn exemptions from the anticircumvention provision.

Since fair use, as codified in 17 U.S.C. 107, is not a defense to the cause of action created by the anticircumvention prohibition of section 1201, the Assistant Secretary urges the Register to follow the House Commerce Committee's intent to provide for exemptions analogous to fair use. He advises the Register to preserve fair use principles by crafting exemptions that are grounded in these principles in order to promote inclusion of all parts of society in the digital economy and prevent a situation in which information crucial to supporting scholarship, research, comment, criticism, news reporting, life-long learning, and other related lawful uses of copyrighted information is available only to those with the ability to pay or the expertise to negotiate advantageous licensing terms.

The Assistant Secretary expresses support for commenters in this proceeding who believed that the term ''class'' should not be interpreted as ''coextensive'' with categories of original works of authorship, as that term is used in section 102(a) of the Copyright Act. He states that since the statute and legislative history provide little guidance on the meaning of the term ''class of works'' and since section 1201(a)(1)(C) instructs the Librarian to examine considerations of use that are similar to fair use analysis, the classes of exempted works should be fashioned based on a factual examination of the uses to which copyrighted materials are put.

In order to craft an exemption that will preserve fair uses, he concludes that the determination of exempted classes of works should include a factual examination of the uses to which copyrighted materials are put. With this in mind, he endorses, ''as a starting point, the exception proposed by the library and academic communities.'' In particular, he would support the crafting of the following exemption: ''Works embodied in copies that have been lawfully acquired by users or their institutions who subsequently seek to make noninfringing uses thereof.''

The Register has subsequently sought and received clarification of some of the points made in the Assistant Secretary's letter. In particular, the Register has asked (1) for the Assistant Secretary's views on whether a ''class of works'' can be defined or determined by reference to the uses of the works in that class, rather than by reference to attributes of the works themselves, and (2) that the Assistant Secretary identify any comments or testimony in the record of this rulemaking proceeding that he believes presented any evidence that technological measures that control access to copyrighted works actually have caused or in the next three years will cause substantial adverse impacts on the ability of users to make noninfringing uses of works in the proposed class of works that he has endorsed.

With respect to how a ''class of works'' is to be defined or determined, NTIA responded by stating that fair use has to be a part of any discussion focusing on exemptions to the DMCA's anticircumvention prohibition, and that because the principle of fair use is grounded in a factual examination of the use to which copyrighted materials are put, it would be reasonable to include a similar examination in fashioning a class of excepted works under 1201(a)(1)(C).

In response to the request to identify comments and testimony that present evidence of substantial adverse impacts on the ability of users to make noninfringing uses of ''works embodied in copies that have been lawfully acquired by users or their institutions who subsequently seek to make noninfringing uses thereof,'' NTIA cited one comment and the testimony of several witnesses. NTIA also questioned whether a showing of ''substantial'' adverse impact is required, observing that ''Nowhere in section 1201(a)(1)(C) does the word ''substantial'' appear'' and asserting that a showing of ''reasonably anticipated impacts'' should be sufficient.

The views of the Assistant Secretary have been seriously considered in the preparation of these recommendations to the Librarian. Because the exemption endorsed by the Assistant Secretary (see discussion above) is not supported in this recommendation, an explanation of the reasons is in order.

At the outset of these comments on the Assistant Secretary's views, it should be understood that there is no

disagreement with the Assistant Secretary or the Commerce Committee on the need to preserve the principles of fair use and other noninfringing uses in the digital age. The Register's disagreement with the Assistant Secretary's proposals arises from the interpretation of both the statutory language of section 1201(a)(1)(C) and a review of the record in this proceeding.

First, the Assistant Secretary's proposals are based on—and necessarily require adoption of—an interpretation of the statutory phrase ''particular class of copyrighted works'' that the Register cannot support. As stated above in section III.A.3, a ''particular class of copyrighted works'' must relate primarily to attributes of the copyrighted works themselves and not to factors that are external to the works, *e.g.,* the material objects on which they are fixed or the particular technology employed on the works. Similarly, neither the language of the statute nor the legislative history provide a basis for an interpretation of an exemption of a class of works that is ''use-oriented.'' While the Register was required to ''examine'' the present or likely adverse effects on uses, and in particular noninfringing uses, that inquiry had the express goal of designating exemptions that were based on classes of copyrighted works. The only examples cited and guidance provided in the legislative history lead the Register to conclude that a class must be defined primarily by reference to attributes of the works themselves, typically based upon the categories set forth in section 102(a) or some subset thereof, *e.g.,* motion pictures or video games.

As NTIA observes, it is appropriate to examine the impact of access control measures on fair use in determining what classes of works, if any, should be subject to an exemption. But the Assistant Secretary has not explained how a ''class of works'' can be defined or determined without any reference whatsoever to attributes of the works themselves, and solely by reference to the status of the persons who acquire copies of those works. While fair use is relevant in determining what classes should be exempted, its relevance relates to the inquiry whether users of a particular class of works (as defined above, in section III.A.3.) are adversely affected in their ability to make noninfringing uses (such as fair use) of works in that class.

The specific exemption endorsed by the Assistant Secretary, and the reasons why that exemption cannot be adopted, are discussed below. See section III.E.9. Those reasons will not be repeated at length here. As already noted, the proposal does not constitute a ''particular class of copyrighted work'' as required by the statute. Moreover, the record does not reveal that there have been adverse effects on noninfringing uses that such an exemption would remedy. Finally, this approach would, in effect, revive a version of section 1201(a)(1) focusing on persons who have gained initial lawful access that was initially enacted by the House of Representatives but ultimately rejected by Congress.

NTIA's observation that the word ''substantial'' does not appear in section 1201(a)(1)(C) does not require the conclusion, suggested by NTIA, that a showing of substantial harm is not required. As noted above (section III.A.2) the House Manager's Report states that the focus of this rulemaking should be on whether the prohibition on circumvention of technological protection measures has had a substantial adverse impact on the ability of users to make non-infringing uses. Although the Commerce Committee Report does not use the word substantial, its direction to make exemptions based upon ''distinct, verifiable, and measurable impacts, and * * * not * * * upon *de minimis* impacts' requires a similar showing. Moreover, while NTIA asserts that an exemption may be made based on a finding of ''likely adverse effects'' or ''reasonably anticipated impacts,'' it appears that a similar showing of substantial likelihood is required with respect to such future harm. See section III.A.2 above. ''Likely''—the term used in section 1201 to describe the showing of future harm that must be made—means ''probable,'' ''in all probability,'' or ''having a better chance of existing or occurring than not.'' Black's Law Dictionary 638 (Abridged 6th ed. 1991).

The comments and testimony identified by NTIA in support of the exemption are discussed below in section III.E.9.

For the foregoing reasons, the Assistant Secretary, in supporting this exemption proposed by libraries and educators, endorses an exemption that is beyond the scope of the Librarian's authority. While the proposed exemption addresses important concerns, it is a proposal that would be more appropriately suited for legislative action rather than for the regulatory process set forth in section 1201(a)(1)(C) and (D). In the absence of clarification by Congress, a ''particular class of works'' cannot be interpreted so expansively.

Some of the issues raised by the Assistant Secretary are also likely to be addressed in a joint study by the Assistant Secretary and the Register pursuant to section 104 of the DMCA. See 65 FR 35673 (June 5, 2000). It is possible that this study will result in legislative recommendations that might more appropriately resolve the issues raised by the Assistant Secretary.

C. Conclusions Regarding This Rulemaking and Summary of Recommendations

After reviewing all of the comments and the testimony of the witnesses who appeared at the hearings, the Register concludes that a case has been made for exemptions relating to two classes of works:

(1) Compilations consisting of lists of websites blocked by filtering software applications; and

(2) Literary works, including computer programs and databases, protected by access control mechanisms that fail to permit access because of malfunction, damage or obsoleteness.

These recommendations may seem modest in light of the sweeping exemptions proposed by many commenters and witnesses, but they are based on a careful review of the record and an application of the standards governing this rulemaking procedure. While many commenters and witnesses made eloquent policy arguments in support of exemptions for certain types of works or certain uses of works, such arguments in most cases are more appropriately directed to the legislator rather than to the regulator who is operating under the constraints imposed by section 1201(a)(1).

Many of the proposed classes do not qualify for exemption because they are not true ''classes of works'' as described above in section III.A.3. The proposed exemptions discussed below in section III.E.2, 5, 6, 7, 8, and 9 all suffer from that frailty to varying degrees. In many cases, proponents attempted to define classes of works by reference to the intended uses to be made of the works, or the intended user. These criteria do not define a ''particular class of copyrighted work.''

For almost all of the proposed classes, the proponents failed to demonstrate that there have been or are about to be adverse effects on noninfringing uses that have ''distinct, verifiable, and measurable impacts.'' See Commerce Comm. Report, at 37. In most cases, those proponents who presented actual examples or experiences with access control measures presented, at best, cases of ''mere inconveniences, or individual cases, that do not rise to the level of a substantial adverse impact.'' See House Manager's Report, at 6. As one leading proponent of exemptions

admitted, the inquiry into whether users of copyrighted works are likely to be adversely effected by the full implementation of section 1201(a)(1) is necessarily ''speculative since it entails a prediction about the future.'' T Jaszi, 5/2/00, pp. 11–12.

It should come as no surprise that the record supports so few exemptions. The prohibition on circumventing access control measures is not yet even in effect. Witnesses who asserted the need to circumvent access control measures were unable to cite any actual cases in which they or others had circumvented access controls despite the fact that such circumvention will not be unlawful until October 28, 2000. T Neal, 5/4/00, p. 103; T Cohen, 5/4/00, pp. 100–01.[7]

The legislative history reveals that Congress anticipated that exemptions would be made only in exceptional cases. See House Manager's Report, at 8 (it is ''not required to make a determination under the statute with respect to any class of copyrighted works. In any particular 3-year period, it may be determined that the conditions for the exemption do not exist. Such an outcome would reflect that the digital information marketplace is developing in the manner which is most likely to occur, with the availability of copyrighted materials for lawful uses being enhanced, not diminished, by the implementation of technological measures and the establishment of carefully targeted legal prohibitions against acts of circumvention.''); Commerce Comm. Report, at 36 (''Still, the Committee is concerned that marketplace realities *may someday* dictate a different outcome, resulting in less access * * *. In this scenario, *it could be appropriate* to modify the flat prohibition against the circumvention of effective technological measures that control access to copyrighted materials * * *.''; ''a ''*fail-safe mechanism*'' is required'; ''This mechanism would * * * allow the enforceability of the prohibition against the act of circumvention to be *selectively* waived, for limited time periods, *if necessary* to prevent a diminution in the availability to individual users of a particular category of copyrighted materials.'') (emphasis added).

The two recommended exemptions do constitute ''particular classes of copyrighted works,'' and genuine harm to the ability to engage in noninfringing activity has been demonstrated. These exemptions will remain in effect for three years. In the next rulemaking, they will be examined *de novo*, as will any other proposed exemption including exemptions that were rejected in this proceeding. If, in the next three years, copyright owners impose access controls in unreasonable ways that adversely affect the ability of users to engage in noninfringing uses, it is likely that the next rulemaking will result in more substantial exemptions.

Ultimately, the task in this rulemaking proceeding is to balance the benefits of technological measures that control access to copyrighted works against the harm caused to users of those works, and to determine, with respect to any particular class of works, whether an exemption is warranted because users of that class of works have suffered significant harm in their ability to engage in noninfringing uses. See House Managers Report at 7 (decision ''should give appropriate weight to the deployment of such technologies in evaluating whether, on balance, the prohibition against circumvention of technological measures has caused an adverse impact on the specified categories of users of any particular class of copyrighted materials''). The four factors specified in section 1201(a)(1)(C) reflect some of the significant considerations that must be balanced: Are access control measures increasing or restricting the availability of works to the public in general? What impact are they having on the nonprofit archival, preservation, and educational activities? What impact are they having on the ability to engage in fair use? To what extent is circumvention of access controls affecting the market for and value of copyrighted works?

The information submitted in this, the first rulemaking proceeding under section 1201(a)(1), indicates that in most cases thus far the use of access control measures has sometimes enhanced the availability of copyrighted works and has rarely impeded the ability of users of particular classes of works to make noninfringing uses. With the exception of the two classes recommended for exemption, the balance of all relevant considerations favors permitting the prohibition against circumvention to go into effect as scheduled.

Licensing

Many of the complaints aired in this rulemaking actually related primarily to licensing practices rather than technological measures that control access to works. Some witnesses expressed concerns about overly restrictive licenses, unwieldy licensing terms, restrictions against use by unauthorized users, undesirable terms and prices, and other licensing restrictions enforced by technological protection measures. *See, e.g.,* T Gasaway, 5/18/00; T Coyle, 5/18/00; T Weingarten, 5/19/00. One of these witnesses admitted that ''some of the concerns today are just pure licensing concerns.'' T Gasaway, 5/18/00, p. 65.

It appears that in those cases, the licensees often had the choice of negotiating licenses for broader use, but did not choose to do so. See T. Clark, 5/3/00, p. 99, T Neal, 5/4/00, p. 133, T Gasaway, 5/18/00, p. 38. Commenters and witnesses who complained about licensing terms did not demonstrate that negotiating less restrictive licenses that would accommodate their needs has been or will be prohibitively expensive or burdensome. Nor has there been a showing that unserved persons not permitted to gain access under a particular license (*e.g.,* a member of the public wishing to gain access to material at a university library when the library's license restricts access to students and faculty) could not obtain access to the restricted material in some other way or place.

It is appropriate to consider harm emanating from licensing in determining whether users of works have been adversely affected by the prohibition on circumvention in their ability to make noninfringing uses. This triennial rulemaking is to ''monitor developments in the marketplace for copyrighted materials,'' Commerce Comm. Report, at 36, and developments in licensing practices are certainly relevant to that inquiry. If, for example, licensing practices with respect to particular classes of works make it prohibitively burdensome or expensive for users, such as libraries and educational institutions, to negotiate terms that will permit the noninfringing uses, and if the effect of such practices is to diminish unjustifiably access for lawful purposes, see Commerce Comm. Report, at 36, exemptions for such classes may be justified. If copyright owners flatly refuse to negotiate licensing terms that users need in order to engage in noninfringing uses, an exemption may be justified. But such a case has not been made in this proceeding.

Many commenters expressed concerns that, in the words of one witness, we are ''on the brink of a pay-per-use universe.'' T Jaszi, 5/2/00, p. 70. The Assistant Secretary for Communications and Information shares that concern, observing that the Commerce Committee Report had warned against the development of a

[7] One witness testified that ''there have been times that we've had to circumvent,'' but on examination, it appears that the example the witness gave would not constitute circumvention of an access control measure. See T Gasaway, 5/18/00, pp. 49–50.

''legal framework that would inexorably create a 'pay-per-use' society.'' See Commerce Comm. Report, at 26.

However, a ''pay-per-use'' business model may be, in the words of the House Manager's Report, ''use-facilitating.'' House Manager's Report, at 7. The Manager's Report refers to access control technologies that are ''designed to allow access during a limited time period, such as during a period of library borrowing'' or that allow ''a consumer to purchase a copy of a single article from an electronic database, rather than having to pay more for a subscription to a journal containing many articles the consumer does not want.'' *Id.* For example, if consumers are given a choice between paying $100 for permanent access to a work or $2 for each individual occasion on which they access the work, many will probably find it advantageous to elect the ''pay-per-use'' option, which may make access to the work much more widely available than it would be in the absence of such an option. The comments and testimony of SilverPlatter Information Inc., demonstrate that the flexibility offered by such ''persistent'' access controls can actually enhance use. Of course, one can imagine pay-per-use scenarios that are likely to make works less widely available as well.

The record in this proceeding does not reveal that ''pay-per-use'' business models have, thus far, created the adverse impacts on the ability of users to make noninfringing uses of copyrighted works that would justify any exemptions from the prohibition on circumvention. If such adverse impacts occur in the future, they can be addressed in a future rulemaking proceeding.

D. The Two Exemptions

1. Compilations Consisting of Lists of Websites Blocked by Filtering Software Applications

Certain software products, often known as ''filtering software'' or ''blocking software,'' restrict users from visiting certain internet websites. These software products include compilations consisting of lists of websites to which the software will deny access. Schools, libraries, and parents may choose to use such software for the purpose of preventing juveniles' access to pornography or other explicit or inappropriate materials on their computers. R56. At least one court that has addressed the use of such software has concluded that requiring use of the software in public libraries offends the First Amendment. *See, e.g., Mainstream Loudoun* v. *Board of Trustees of the Loudoun County Library,* 24 F. Supp. 2d 552 (E.D. Va. 1998). See also Tenn. Op. Atty. Gen. No. 00–030 (2000). On the other hand, the Supreme Court has suggested that availability of such software for use by parents to prevent their children from gaining access to objectionable websites is a positive development. *Reno* v. *American Civil Liberties Union,* 521 U.S. 844, 876–77 (1997); *United States* v. *Playboy Entertainment Group, Inc.,* 120 S.Ct. 1878, 1887 (2000).

Critics charge that some filtering programs unfairly block sites that do not contain undesirable material and therefore should not be filtered. One commenter alleged that such programs have an error rate of 76%. R56 at 6. Another commenter described the ''long history of errors in blocking sites,'' and asserted that the software manufacturers have not responded appropriately. R26. The names of blocked websites are compiled into lists which are protected by copyright as compilations. Several commenters assert that manufacturers of filtering software encrypt the lists naming the targeted sites and that they are not made available to others, including the operators of the targeted sites themselves. R56. These commenters assert that they have no alternative but to decrypt the encrypted lists in order to learn what websites are included in those lists. Persons have already decrypted the lists for the purpose of commenting on or criticizing them. R56. One commenter cites an injunction against authors of a program decrypting the list of blocked websites. R26. See *Microsystems Software, Inc.* v. *Scandinavia Online AB,* No. 00–1503 (1st Cir. Sept. 27, 2000). Such acts of decryption would appear to violate 1201(a)(1) if it took effect without an exemption for these activities.

This does appear to present a problem for users who want to make noninfringing uses of such compilations, because reproduction or display of the lists for the purpose of criticizing them could constitute fair use. The interest in accessing the lists in order to critique them is demonstrated by court cases, websites devoted to the issue, and a fair number of commenters. See generally R73 (Computer Professionals for Social Responsibility); R38; PH20; and PH5 (California Association of Library Trustees and Commissioners, reverse filtering); WS Vaidhyanathan. There is uncontroverted evidence in this record that the lists are not available elsewhere. No evidence has been presented that there is not a problem with respect to lists of websites blocked by filtering software, or that permitting circumvention of technological measures that control access to such lists would have a negative impact on any of the factors set forth in section 1201(A)(1)(C). The commenters assert that there is no other legitimate way to obtain access to this information. No one else on the record has asserted otherwise.

A review of the factors listed in 1201(a)(1)(C) supports the creation of this exemption. Although one can speculate that the availability of technological protection measures that deny access to the lists of blocked websites might be of benefit to the proprietors of filtering software, and might even increase the willingness of those proprietors to make the software available for use by the public, no commenters or witnesses came forward to make such an assertion. No information was presented relating to the use of either the filtering software or the lists of blocked websites for nonprofit archival, preservation and educational purposes. Nor was any information presented relating to whether the circumvention of technological measures preventing access to the lists has had an impact on the market for or value of filtering software or the compilations of objectionable websites contained therein. However, a persuasive case was made that the existence of access control measures has had an adverse effect on criticism and comment, and most likely news reporting, and that the prohibition on circumvention of access control measures will have an adverse effect.

Thus, it appears that the prohibition on circumvention of technological measures that control access to these lists of blocked sites will cause an adverse effect on noninfringing users since persons who wish to criticize and comment on them cannot ascertain which sites are contained in the lists unless they circumvent. The case has been made for an exemption for compilations consisting of lists of websites blocked by filtering software applications.

2. Literary Works, Including Computer Programs and Databases, Protected by Access Control Mechanisms That Fail to Permit Access Because of Malfunction, Damage or Obsoleteness

This designation of class of works is intended to exempt users of software, databases and other literary works in digital formats who are prevented from accessing such works because the access control protections are not functioning in the way that they were intended. In the course of this rulemaking

proceeding, a number of users, and in particular consumers of software and users of compilations, expressed concerns about works which they could not access even though they were authorized users, due to the failure of access control mechanisms to function properly.

Substantial evidence was presented on this issue, in particular relating to the use of ''dongles,'' hardware locks attached to a computer that interact with software programs to prevent unauthorized access to that software. C199. One commenter attached numerous letters and news articles to his submission and testimony, documenting the experience of users whose dongles become damaged or malfunction. It appears that in such instances, the vendors of the software may be nonresponsive to requests to replace or repair the dongle, or may require the user to purchase either a new dongle or an entirely new software package, usually at a substantial cost. In some cases, the vendors have gone out of business, and the user has had no recourse for repair or replacement of the dongle.

Libraries and educational institutions also stated that they have experienced instances where materials they obtained were protected by access controls that subsequently malfunctioned, and they could not obtain timely relief from the copyright owner. R34, R75 (National Library of Medicine), R111 (National Agricultural Library). Similarly, libraries stated that there have been instances where material has been protected by technological access protections that are obsolete or are no longer supported by the copyright owner. *Id.*

No evidence has been presented to contradict the evidence of problems with malfunctioning, damaged or obsolete technological measures. Nor has evidence been presented that the marketplace is likely to correct this problem in the next three years.

This appears to be a genuine problem that the market has not adequately addressed, either because companies go out of business or because they have insufficient incentive to support access controls on their products at some point after the initial sale or license. In cases where legitimate users are unable to access works because of damaged, malfunctioning or obsolete access controls, the access controls are not furthering the purpose of protecting the work from unauthorized users. Rather, they are preventing authorized users from getting the access to which they are entitled. This prevents them from making the noninfringing uses they could otherwise make. This situation is particularly troubling in the context of libraries and educational institutions, who may be prevented from engaging in noninfringing uses of archiving and preservation of works protected by access controls that are obsolete or malfunctioning. In effect, it puts such users in a position where they cannot obtain access; nor, under 1201(a)(1), would they be permitted to circumvent the access controls to make non-infringing uses of the work unless they fall within an exemption.

Not only does such a result have an adverse impact on noninfringing uses, but it also does not serve the interests of copyright owners that 1201(a)(1) was meant to protect. In almost all cases where this exemption will apply, the copyright owner will already have been compensated for access to the work. It is only when the access controls malfunction that the exemption will come into effect. This does not cause significant harm to the copyright owner. Moreover, authorized users of such works are unlikely to circumvent the access controls unless they have first sought but failed to receive assistance from the copyright owner, since circumvention is likely to be more difficult and time-consuming than obtaining assistance from a copyright owner who is responsive to the needs of customers. Only as a fallback will most users attempt to circumvent the access controls themselves.

Although it might be tempting to describe this class as ''works protected by access control mechanisms that fail to permit access because of malfunction, damage or obsoleteness,'' that would not appear to be a legitimate class under section 1201 because it would be defined only by reference to the technological measures that are applied to the works, and not by reference to any intrinsic qualities of the works themselves. See the discussion of ''works'' above in section III.A.3. The evidence in this rulemaking of malfunctioning, damaged or obsolete technological protection measures has related to software (dongles) and, in the cases raised by representatives of libraries, to compilations of literary works and databases. Therefore, this class of works is defined primarily in terms of such literary works, and secondarily by reference to the faulty technological protection measures.

Although this exemption fits within the parameters of the term ''class of works'' as described by Congress, it probably reaches the limits of those parameters. The definition of the class does start with a section 102 category of works—literary works. It then narrows that definition by reference to attributes of access controls that sometimes protect those works—i.e., the failure of those access controls to function as intended. But in reality, this exemption addresses a problem that could be experienced by users in accessing all classes of copyrighted works. This subject matter is probably more suitable for a legislative exemption, and the Register recommends that Congress consider amending section 1201 to provide a statutory exemption for all works, regardless of what class of work is involved, that are protected by access control mechanisms that fail to permit access because of malfunction, damage or obsoleteness. Meanwhile, because genuine harm has been demonstrated in this rulemaking proceeding and because it is possible to define a class of works that fits within the framework of section 1201(a)(1)(B), (C) and (D), the Register recommends that the Librarian exempt this class of works during the first three years in which section 1201(a)(1) is in effect. But the fact that sufficient harm has been found to justify this exemption for this three-year period will not automatically justify a similar exemption in the next triennial rulemaking. In fact, if there were a showing in the next rulemaking proceeding that faulty access controls create adverse impacts on noninfringing uses of all categories of works, such a showing could, parodoxically, result in the conclusion that the problem is not one that can be resolved pursuant to section 1201(a)(1)(C) and (D), which anticipates exemptions only for ''a particular class of works.'' A legislative resolution of this problem is preferable to a repetition of the somewhat ill-fitting regulatory approach adopted herein.

The class of works covers literary works—and is applicable in particular to computer programs, databases and other compilations—protected by access controls that fail to permit access because of damage, malfunction or obsoleteness. The terms ''damage'' and ''malfunction'' are fairly self-explanatory, and would apply to any situation in which the access control mechanism does not function in the way in which it was intended to function. For definition of the term ''obsolete,'' it is instructive to look to section 108(c), which also addresses the issue of obsoleteness. For the purposes of section 108, ''a format shall be considered obsolete if the machine or device necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.'' In the context of this

rulemaking, an access control should be considered obsolete in analogous circumstances.

An exemption for this class, however, would not cover several other types of problems that commenters presented. For example, a commenter describing the problems experienced by users of damaged or malfunctioning dongles noted that similar problems occur when dongles become lost or are stolen. C199. That is, vendors of the software are often reluctant to replace the dongle, or insist that the user purchase a new dongle at a high cost. While this may be a problem, exempting works in this situation could unfairly prejudice the interests of copyright owners, who have no way of ascertaining whether the dongle was in fact lost or stolen, or whether it has been passed on to another user along with an unauthorized copy of the software, while the original user obtains a replacement by claiming the original dongle was lost. This exemption also would not cover situations such as those described by certain libraries, who expressed the fear that they would be prevented by 1201(a)(1) from reformatting materials that are in obsolete formats. If the materials did not contain access control protections, but were merely in an obsolete format, 1201(a)(1) would not be implicated. To the extent that technological protections prevented the library from converting the format, those protections would seem to be copy controls, the act of circumvention of which is not prohibited by section 1201.

The factors listed in 1201(a)(1)(C) support the creation of this exemption. In cases such as those described above, access controls actually decrease the availibility of works for any use, since works that were intended to be available become unavailable due to damage, malfunction or obsoleteness. This decrease in availability is felt particularly by the library and educational communities, who have been prevented from making non-infringing uses, including archiving and preservation, by malfunctioning or obsolete access controls. Circumvention of access controls in these instances should not have a significant effect on the market for or value of the works, since copyright owners typically will already have been compensated for the use of the work.

E. Other Exemptions Considered, But Not Recommended

A number of other proposed exemptions were considered, but for the reasons set forth below the Register does not recommend that any of them be adopted.

1. ''Thin Copyright'' Works

Many commenters have urged the exemption of a class of works consisting of what they term ''thin copyright works.'' These are works consisting primarily (but not entirely) of matter unprotected by copyright, such as U.S. government works or works whose term of copyright protection has expired, or works for which copyright protection is ''thin,'' such as factual works. As one proponent, the Association of American Universities, described the class, it includes ''works such as scholarly journals, databases, maps, and newspapers [which] are primarily valuable for the information they contain, information that is not protected by copyright under Section 102(b) of the Copyright Act.'' C161. Most often this argument is made in the context of databases that contain a significant amount of uncopyrightable material. These databases may nonetheless be covered by copyright protection by virtue of the selection, coordination and arrangement of the materials. They may also incorporate copyrightable works or elements, such as a search engine, headnotes, explanatory texts or other contributions that represent original, creative authorship. While this proposal is frequently made with reference to databases, it is not limited to them, and would apply to any works that contain a mixture of copyrightable and uncopyrightable elements.

Proponents of such an exemption make two related arguments. First, some commenters argue that using Section 1201(a)(1) to prohibit circumvention of access controls on works that are primarily factual, or in the public domain, bootstraps protection for material that otherwise would be outside the scope of protection. It would, in effect, create legal protection for even the uncopyrightable elements of the database, and go beyond the scope of what Section 1201(a)(1) was meant to cover. An exemption for these kinds of works, proponents argue, is necessary to preserve an essential element of the copyright balance '' that copyright does not protect facts, U.S. government works, or other works in the public domain. Without such an exemption, users will be legally prevented from circumventing access controls to, and subsequently making noninfringing uses of, material unprotected by copyright.

A related worry of commenters is that, in practice, section 1201(a)(1) will be used to ''lock up'' works unprotected by copyright. They predict that compilers of factual databases will have an incentive to impose a thin veneer of copyright on a database, by adding, for example, some graphics or an introduction, and thus take unfair advantage of the protection afforded by Section 1201. In addition, they fear that access to works such as databases, encyclopedias, and statistical reports, which are a mainstay of the educational and library communities, will become increasingly and prohibitively expensive.

On the record developed in this proceeding, the need for such an exemption has not been demonstrated. First, although proponents argue that 1201(a)(1)(A) bootstraps protection for uncopyrightable elements in copyrightable databases, the copyrightable elements in databases and compilations usually create significant added value. Indeed, in most cases the uncopyrightable material is available elsewhere in ''raw'' form, but it is the inclusion of that material in a copyrightable database that renders it easier to use. Search engines, headnotes, selection, and arrangement, far from being a thin addition to the database, are often precisely the elements that database users utilize, and which make the database the preferred means to access and use the uncopyrightable material it contains. Because it is the utility of those added features that most users wish to access, it is appropriate to protect them under Section 1201(a)(1)(A). Moreover, all copyrightable works are likely to contain some uncopyrightable elements, factual or otherwise. This does not undermine their protection under copyright or under 1201(a)(1)(A).[8]

Second, the fear that 1201(a)(1)(A) will disadvantage users by ''locking up'' uncopyrightable material, while understandable, does not seem to be borne out in the record of this proceeding. Commenters have not provided evidence that uncopyrightable material is becoming more expensive or difficult to access since the enactment of Section 1201, nor have they shown that works of minimal copyright authorship

[8] One commenter suggested an exemption for ''compilations and other works that incorporate works in the public domain, unless the compilation or work was marked in such a way as to allow identification of public domain elements and separate circumvention of the technological measures that controlled access to those elements.'' PH4 (Ginsburg). While this approach could address some of the concerns raised by proponents, it is unclear whether it would be technologically feasible for copyright owners to implement. Furthermore, as discussed below, the Register has not yet been presented with evidence that there have been or are likely to be adverse impacts in this area.

are being attached to otherwise unprotectible material to take advantage of the 1201 prohibitions. The examples presented in this rulemaking proceeding of databases that mix copyrightable and uncopyrightable elements seem to be operating in a way that minimizes the impact on noninfringing uses, such as the LEXIS/NEXIS database and databases produced by a witness in the Washington DC hearings, SilverPlatter Information Inc. These databases provide business models that allow users to pay for different levels of access, and to choose different payment schedules depending on the way they would like to use the database. Finally, although the fear that material will be ''locked up'' is most compelling with respect to works that are the ''sole source'' of uncopyrightable material, most of the uncopyrightable material in these databases can be found elsewhere, albeit not with the access and use-enhancing features provided by the copyrightable contributions. Where users can reasonably find these materials in other places, their fears that it will be ''locked up'' are unwarranted.

In applying the four factors in Section (a)(1)(C), the impact of access control technologies on the availability of works in general, and their impact on the library and educational communities in particular, must be evaluated. In general, it appears that the advent of access control protections has increased the availability of databases and compilations. Access controls provide an increased incentive for database producers to create and maintain databases. Often, the most valuable commodity of a database producer is access to the database itself. If a database producer could not control access, it would be difficult to profit from exploitation of the database. Fewer databases would be created, resulting in diminished availability for use. If there were evidence that technological access protections made access to these works prohibitively expensive or burdensome, it would weigh against increased availability. However, as discussed above, such evidence has not been presented in this proceeding. Nor has there been a showing of any significant adverse impact thus far on nonprofit archival, preservation and educational activities or on criticism, comment, news reporting, teaching, scholarship or research. There is no evidence that the use of technological measures that control access to ''thin copyright'' works has made those works less accessible for such purposes than they were prior to the introduction of such measures. Finally, in assessing the effect of circumvention on the market for or value of the works, it appears likely that if circumvention were permitted, the ability of database producers to protect their investment would be seriously undermined and the market would be harmed.

2. Sole Source Works

A number of commenters proposed an exemption for a class of ''sole source works,'' that is, works that are available from a single source, which makes the works available only in a form protected by access controls.[9] C162 (American Library Association et al.); C213; C234. Proponents fear that works will increasingly become available only in digital form, which will be subject to access controls that prohibit users who want to make noninfringing uses from accessing the work, either because access will be too costly or will be refused. In such cases, where there is no other way to get access to the work, all noninfringing uses of the work will be adversely impacted.

Again, it is questionable whether proponents of an exemption have identified a genuine ''class'' of works. The only thing the works in this proposed class have in common is that each is available from a single source. Moreover, the case has not been made for an exemption for this proposed class.

Commenters submitted different examples of works that were available only in digital form. These included a number of databases and indexes. C162 (ALA). In addition, several commenters noted that digital versions of works, such as motion pictures in DVD format, often contain material, such as interviews, film clips or search engines, not found in the analog versions of the same works. C162, C234.[10]

The concerns of proponents of this type of exemption are understandable. However, there has been no evidence submitted in this rulemaking that access to works available only in a secured format is being denied or has become prohibitively difficult. Even considering the examples presented by various commenters, they merely establish that there are works that exist only in digital form. They have not established that access controls on those works have adversely impacted their ability to make noninfringing uses, or, indeed, that access controls impede their use of those works at all. In the case of databases and indexes, the Register heard no evidence that licenses to those works were not available or were available only on unreasonable and burdensome terms. For example, in the case of motion pictures on DVDs, anyone with the proper equipment can access (view) the work. If there were evidence that technological access controls were being used to lock up material in such a way that there was effectively no means for a user wanting to make a noninfringing use to get access, it could have a substantial adverse impact on users.[11] No such evidence has been presented in this proceeding. If such evidence is presented in a subsequent proceeding, the case for an exemption may be made.

With respect to this proposed class, little evidence has been presented relating to any of the factors set forth in Section 1201(a)(1)(C). However, a review of those factors confirms that no exemption is justified in this case. If, as the proponents of this exemption assert, there are works that are available only in digital form and only with access control protections, many if not most of those works presumably would not have been made available at all if access control measures had not been available. Indeed, it appears that many of the ''sole source'' works identified by the American Library Association are works that most likely did not exist in the predigital era. See C162, p. 24. As with ''thin copyright'' works, no showing has been made of an adverse impact on the purposes set forth in 1201(a)(1)(C)(ii) and (iii).

3. Audiovisual Works on Digital Versatile Discs (DVDs)

More comments and testimony were submitted on the subject of motion pictures on digital versatile discs (DVDs) and the technological measures employed on DVDs, primarily Content Scrambling System (''CSS''), than on any other subject in this rulemaking. DVDs are digital media, similar to compact discs but with greater capacity, on which motion pictures and other audiovisual and other works may be stored. DVDs have recently become a

[9] This subject has been discussed briefly above, in reference to databases that contain uncopyrightable material not available elsewhere. This section, however, refers mainly to copyrightable sole source works.

[10] The DVD issue is addressed below, Section III.E.3.

[11] Nonetheless, that evidence would have to be balanced against an author's right to grant access to a work. By definition, any unpublished creative work is almost certain to be available only from a single source—the author. Historically, there has never been a right to access an unpublished work, and the law has guarded an author's right to control first publication. Even when material has already been published, there is no absolute right of access. Even with nondigital formats, one must either purchase a copy of the work or go to someone who has purchased a copy (*e.g.,* a library) in order to obtain access to it.

major medium, although not yet the predominant medium, for the distribution of motion pictures in the ''home video'' market. CSS is an encryption system used on most commercially distributed DVDs of motion pictures. DVDs with CSS may be viewed only on equipment licensed by the DVD Copy Control Association (DVD CCA). PH25. The terms of the DVD CCA license permits licensed devices to decrypt and play—but not to copy—the films. For a more complete discussion of DVDs and CSS, see *Universal City Studios, Inc.* v. *Reimerdes*, 111 F. Supp.2d 294 (S.D.N.Y. 2000), 55 U.S.P.Q.2d 1873 (S.D.N.Y. 2000).

Proponents of an exemption for motion pictures on DVDs raised four general arguments. First, they asserted that CSS represents a merger of access and use controls,[12] such that one of those two control functions of the technology cannot be circumvented without also circumventing the other. PH11. Since Congress prohibited only the conduct of circumventing access measures and declined to enact a comparable prohibition against circumvention of measures that protect the rights of the copyright owner under § 1201(b), they argued that a merger of controls exceeds the scope of the congressional grant. In this view, the merger of access and use controls would effectively bootstrap the legal prohibition against circumvention of access controls to include copy controls and thereby prevents a user from making otherwise noninfringing uses of lawfully acquired copies, such as excerpting parts of the material on a DVD for a film class, which might be a fair use.

While this is a significant concern, there are a number of considerations to be balanced. From the comments and testimony presented, it is clear that, at present, most works available in DVD format are also available in analog format (VHS tape) as well. R123, T Marks, 5/19/00, p. 301. When distributed in analog formats—formats in which distribution is likely to continue for the foreseeable future—these works are not protected by any technological measures controlling access. WS Sorkin, p. 5. Therefore, any harm caused by the existence of access control measures used in DVDs can be avoided by obtaining a copy of the work in analog format. See House Manager's Report, at 7 (''in assessing the impact of the prohibition on the ability to make noninfringing uses, the Secretary should take into consideration the availability of works in the particular class in other formats that are not subject to technological protections.'').[13]

Thus far, no proponents of this argument for an exemption have come forward with evidence of any substantial or concrete harm. Aside from broad concerns, there have been very few specific problems alleged. The allegations of harm raised were generally hypothetical in nature, involved relatively insignificant uses, or involved circumstances in which the noninfringing nature of the desired use was questionable (*e.g.,* backup copies of the DVD) or unclear. T Robin Gross, 5/19/00, pp. 314–15. This failure to demonstrate actual harm in the years since the implementation of the CSS measures tends to undermine the fears of proponents of an exemption.

Similarly, in all of the comments and testimony on this issue, no explanation has been offered of the technological necessity for circumventing the access controls associated with DVDs in order to circumvent the copy controls. If the copy control aspects of CSS may be circumvented without circumventing its access controls, this is clearly not a violation of Section 1201(a)(1)(A). There was no showing that copy or use controls could not be circumvented without violating Section 1201(a)(1). In contrast, there was specific testimony that an analog output copy control on DVD players, Macrovision, could be circumvented by an individual without circumventing the CSS protection measures and without violating section 1201(a)(1). T Marks, 5/19/00, pp.345–46. It would appear that circumvention of the Macrovision control, conduct not prohibited by any of the provisions of section 1201, would enable many of the noninfringing uses alleged to be prevented. If in a subsequent rulemaking proceeding one could show that a particular ''copy'' or ''use'' control could not in fact be circumvented on a legitimately acquired copy without also circumventing the access measure, one might meet the required burden on this issue.

The merger of technological measures that protect access and copying does not appear to have been anticipated by Congress.[14] Congress did create a distinction between the conduct of circumvention of access controls and the conduct of circumvention of use controls by prohibiting the former while permitting the latter, but neither the language of section 1201 nor the legislative history addresses the possibility of access controls that also restrict use. It is unclear how a court might address this issue. It would be helpful if Congress were to clarify its intent, since the implementation of merged technological measures arguably would undermine Congress's decision to offer disparate treatment for access controls and use controls in section 1201.

At present, on the current record, it would be imprudent to venture too far on this issue in the absence of congressional guidance. The issue of merged access and use measures may become a significant problem. The Copyright Office intends to monitor this issue during the next three years and hopes to have the benefit of a clearer record and guidance from Congress at the time of the next rulemaking proceeding.

Another argument raised in the comments and testimony regarding DVDs is that users of Linux and other operating systems who own computers with DVD drives and who purchase legitimate copies of audiovisual works on DVDs should be able to view these works. Many Linux users have complained that they are unable to view the works on their computers because a licensed player has not yet been developed for the Linux OS platform. R56, PH11, PH3. While this situation created frustration for legitimate users,

[12] In this discussion, the term ''use controls'' is used as a shorthand term for technological measures that effectively protect rights of copyright owners under title 17 (*e.g.,* copy controls)—the controls that are the subject of the prohibition against certain technologies, products, services, devices and components found in section 1201(b)(1).

[13] Perhaps the best case for actual harm in this context was made with respect to matter that is available along with the motion picture in DVD format but not available in videotape format, such as outtakes, interviews with actors and directors, additional language features, etc. See C204, p. 4. However, this ancillary material traditionally has not been available in copies for distribution to the general public, and it appears that it is only with the advent of the DVD format that motion picture producers have been willing or able to include such material along with copies of the motion pictures themselves. Because of this and because motion picture producers are generally unwilling to release their works in DVD format unless they are protected by access control measures, it cannot be said that enforcing section 1201(a)(1) would, in the words of the Commerce Committee, result ''in less access, rather than more, to copyrighted materials that are important to education, scholarship, and other socially vital endeavors.'' See Commerce Comm. Report, at 35. Thus, it appears that the availability of access control measures has resulted in greater availability of these materials.

[14] However, CSS was already in development in 1998 when the DMCA was enacted. It cannot be presumed that the drafters of section 1201(a) were unaware of CSS. If CSS does involve a merger of access controls and copy controls, it is conceivable that the drafters of section 1201(a)(1) were aware of that. And it is quite possible that they anticipated that CSS would be a ''technological measure that effectively controls access to a work.''

the problem requires balancing of other considerations.

The reasonable availability of alternate operating systems (dual bootable) or dedicated players for televisions suggests that the problem is one of preference and inconvenience, and leads to the conclusion that an exemption is not warranted. T Metalitz, 5/19/00, pp. 298–99. Moreover, with the rapidly growing market of Linux users, it is commercially viable to create a player for this particular operating system. T Metalitz, 5/19/00, pp. 297–98. DVD CSS has expressed its willingness to license such players, and in fact has licensed such players. PH25. There is evidence that Linux players are currently being developed (Sigma Designs and Intervideo) and should be available in the near future. It appears likely that the market place will soon resolve this particular concern. PH123 (MPAA).

While it does not appear that Congress anticipated that persons who legitimately acquired copies of works should be denied the ability to access these works, there is no unqualified right to access works on any particular machine or device of the user's choosing. There are also commercially available options for owners of DVD ROM drives and legitimate DVD discs. Given the market alternatives, an exemption to benefit individuals who wish to play their DVDs on computers using the Linux operating system does not appear to be warranted.

It appears from the comments and testimony presented in this proceeding that the motion picture industry relied on CSS in order to make motion pictures available in digital format. R123. An exemption for motion pictures on DVDs would lead to a decreased incentive to distribute these works on this very popular new medium. It appears that technological measures on DVDs have increased the availability of audiovisual works to the general public, even though some portions of the public have been inconvenienced.

A third argument raised relating to DVDs was the asserted need to reverse engineer DVDs in order to allow them to be interoperable with other devices or operating systems. C10, C18, C221. While there has been limited judicial recognition of a right to reverse engineer for purposes of interoperability of computer programs in the video game industry, see *Sega Enterprises, Inc.* v. *Accolade, Inc.,* 977 F.2d 1510 (9th Cir. 1992); *Sony Computer Entertainment, Inc.* v. *Connectix,* 203 F.3d 596 (9th Cir. 2000), this rulemaking proceeding is not an appropriate forum in which to extend the recognition of such a right beyond the scope recognized thus far by the courts or by Congress in section 1201(f). In section 1201 itself, Congress addressed the issue of reverse engineering with respect to computer programs that are reverse engineered for the purpose of interoperability under certain circumstances to the ''extent any such acts of identification and analysis do not constitute infringement under this title.'' One court has rejected the applicability of section 1201(f) to reverse engineering of DVDs. *Universal City Studios, Inc.* v. *Reimerdes,* 82 F.Supp.2d 211, 217–18 (S.D.N.Y. 2000); see also *Universal City Studios, Inc.* v. *Reimerdes,* 111 F. Supp.2d 294 (S.D.N.Y. 2000), 55 U.S.P.Q.2d 1873 (S.D.N.Y. 2000). That decision is on appeal. If subsequent developments in that case or future cases lead to judicial recognition that section 1201(f) does apply to a case such as this, then presumably there would be no need to fashion an exemption pursuant to section 1201(a)(1)(C). If, as the *Reimerdes* court has held, section 1201(f) does not apply in such a situation, an agency fashioning exemptions pursuant to section 1201(a)(1)(C) should proceed with caution before creating an exemption to accommodate reverse engineering that goes beyond the scope of a related exemption enacted by Congress expressly for the purpose of reverse engineering in another subsection of the same section of the DMCA. In any event, a more compelling case must be made before an exemption for reverse engineering of DVDs could be justified pursuant to section 1201(a)(1)(C).

The final argument in support of an exemption for audiovisual works on DVDs was based on the motion picture industry's use of region coding as an access control measure. Proponents of an exemption argued that region coding prevents legitimate users from playing foreign films on DVDs which were purchased abroad on their machines that are encoded to play only DVDs with region coding for the region that includes the United States. C133, C231, C234, R92, PH11. There was also some showing that foreign releases of American and foreign motion pictures may contain content that is not available on the American releases and that circumvention may be necessary in order to access this material. T Gross, 5/19/00, p. 314.

While the use of region coding may restrict unqualified access to all movies, the comments and testimony presented on this issue did not demonstrate that this restriction rises to the level of a substantial adverse effect. The problem appears to be confined to a relatively small number of users. The region coding also seems to result in inconvenience rather than actual or likely harm, because there are numerous options available to individuals seeking access to this foreign content (PAL converters to view foreign videotapes, limited reset of region code option on DVD players, or purchase of players set to different codes). Since the region coding of audiovisual works on DVDs serves legitimate purposes as an access control,[15] and since this coding encourages the distribution and availability of digital audiovisual works, on balance, the benefit to the public exceeds the *de minimis* harm alleged at this time. If, at some time in the future, material is available only in digital format protected by region codes and the availability of alternative players is restricted, a more compelling case for an exemption might be made.

Consideration of the factors enumerated in subsection 1201(a)(1)(C) supports the conclusion that no exemption is warranted for this proposed class. The release of audiovisual works on DVDs was predicated on the ability to limit piracy through the use of technological access control measures. R123. These works are widely available in digital format and are also readily available in analog format. R123 and WS Sorkin, p. 5. The digital release of motion pictures has benefitted the public by providing better quality and enhanced features on DVDs. While Linux users represent a significant and growing segment of the population and while these users have experienced inconveniences, the market is likely to remedy this problem soon. PH25. See the discussion of the Linux players being developed by Sigma Designs and Intervideo, above. Moreover, there are commercially reasonable alternatives available to these users. R123. The restrictions on DVDs are presently offset by the overall benefit to the public resulting from digital release of audiovisual works. Therefore, at present the existence of technological measures that control access to motion pictures on DVDs has not had a significant adverse impact on the availability of those works to the public at large.

On the question of the availability for use of works for nonprofit archival, preservation, and educational purposes, there was minimal evidence presented that these uses have been or are likely to be adversely affected during the

[15] Among other purposes, it prevents the marketing of DVDs of a motion picture in a region of the world where the motion picture has not yet been released in theatres, or is still being exhibited in theatres. See PH12, pp. 3–4.

ensuing three year period. As stated above, facts relating to the issue of the existence of merged access and use controls may be presented in the next triennial rulemaking proceeding to determine whether the prohibition on circumvention of access controls is being employed in such a manner that it also restricts noninfringing uses.

The impact that the prohibition on the circumvention of technological measures applied to copyrighted works has had or is likely to have on criticism, comment news reporting, teaching, scholarship, or research is uncertain. At present, the concerns expressed were speculative and the examples of the prohibition's likely adverse effects were minimal. At this time it appears likely that these concerns will be tempered by the market. If the market does not effectively resolve problems and sufficient evidence of substantial adverse effects are presented in the next triennial rulemaking proceeding, the Register will re-assess the need for an exemption.

At this time it appears clear from the evidence that the circumvention of technological protection measures would be likely to have an adverse effect on the availability of digital works on DVDs to the public. The music industry's reluctance to distribute works on DVDs as a consequence of circumvention of CSS is a specific example of the potential effect on availability: ''In fact, it was the very hack of CSS that caused a delay in introduction of DVD audio into the marketplace.'' T Sherman, 5/3/2000, p. 18. Since the circumvention of technological access control measures will delay the availability of ''use-facilitating'' digital formats that will benefit the public and that are proving to be popular with the public, the promulgation of an exemption must be carefully considered after a balancing of all the foregoing considerations. At present, the evidence weighs against an exemption for audiovisual works on DVDs.

4. Video Games in Formats Playable Only on Dedicated Platforms

A number of comments and one witness at the hearings sought an exemption for video games that are playable only on proprietary players. T Hangartner, 5/17/00, p. 247, R73, R109. The arguments in support of an exemption for video games included three issues: reverse engineering of the games for interoperability to other platforms, merger of access and use controls, and region coding of the games.

The existence of video games playable on dedicated platforms is not a new phenomenon in the marketplace. The Computer Software Rental Amendments Act of 1990 expressly provides for different treatment of video games sold only for use with proprietary platforms and those licensed for use on a computer capable of reproduction, recognizing the lower risk that the former will be copied to the detriment of the copyright owner. 17 U.S.C. 109(b)(1)(B)(ii). In the few comments addressing the need for interoperability of video games, there was very little evidentiary support for this alleged need. In fact, the testimony on behalf of Bleem, Inc. demonstrated that in cases involving interoperability of video games, courts have held either that section 1201 is inapplicable or that the exemption in 1201(f) shields this activity for purposes of discovering functional elements necessary for interoperability. T Hangartner, 5/19/00, p. 250; T Russell, 5/19/00, p. 332. Since the Basic Input Output System (BIOS) in these dedicated platforms is a computer program, section 1201(f) would appear to address the problem. To the extent that an identifiable problem exists that is outside the scope of section 1201(f), and therefore potentially within the scope of this rulemaking, its existence has not been sufficiently articulated to support the recommendation for an exemption. See also the discussion of reverse engineering below in Section III.E.5.

The claim that the technological measures protecting access to video games also restrict noninfringing uses of the games also has not been supported by any verifiable evidence. For example, while the backup of such a work may be a noninfringing use, no evidence has been presented that access control measures, as distinguished from copy control measures, have caused an inability to make a backup, and the latter is the more likely cause. Nor has there been any showing that any copy or use control has been merged with an access control, such that the former cannot be circumvented without the latter.

The paucity of evidence supporting an exemption on the basis of region coding similarly precludes a recommendation for an exemption. The few comments that mentioned this issue do not rise to the level of substantial adverse affect that would warrant an exemption for video games.

The factors set forth in section 1201(a)(1)(C) do not support an exemption. There is no reason to believe that there has been any reduction in the availability of video games for use despite the fact that video games have incorporated access controls and dedicated platforms for many years. To the extent there has been a need for interoperability, it appears that section 1201(f) will allow functional features to be determined as the courts have allowed in the past. There has been insufficient evidence presented to indicate that video games have or will become less available after § 1201(a)(1) goes into effect. There was no evidence offered that the prohibition on circumvention will adversely effect nonprofit archival, preservation, or educational uses of these works. There was also no evidence presented that the prohibition would have an adverse effect on criticism, comment, news reporting, teaching, scholarship, or research. On the other hand, there was little evidence that circumvention would have a negative impact on the market for or value of these copyrighted works, but this is of little consequence given the *de minimis* showing of any adverse impact access control measures have had on availability of the works for noninfringing uses.

5. Computer Programs and Other Digital Works for Purposes of Reverse Engineering

A number of commenters asserted that reverse engineering is a noninfringing use that should be exempted for all classes of digital works. C143, R82. As already noted, reverse engineering was also raised as a basis for an exemption in relation to audiovisual works on DVDs and video games. C221. The arguments raised in support of a reverse engineering exemption for such works are addressed above. To the extent that reverse engineering is proposed for all classes of digital works, it does not meet the criteria of a class. A ''class of works'' cannot be defined simply in terms of the purpose for which circumvention is desired. See the discussion above, Section III.A.3.

Moreover, to the extent that commenters seek an exemption to permit reverse engineering of computer programs, the case has not been made even if it is permissible to designate a class of ''computer programs for the purpose of reverse engineering.'' When it enacted section 1201, Congress carved out a specific exemption for reverse engineering of computer programs, section 1201(f). That exemption permits circumvention of an access control measure in order to engage in reverse engineering of a computer program with the purpose of achieving interoperability of an independently created computer program with other

programs, under certain circumstances set forth in the statute. When Congress has specifically addressed the issue by creating a statutory exemption for reverse engineering in the same legislation that established this rulemaking process, the Librarian should proceed cautiously before, in effect, expanding the section 1201(f) statutory exemption by creating a broader exemption pursuant to section 1201(a)(1)(C).

The proponents of an exemption for reverse engineering have expressed their dissatisfaction with the limited circumstances under which section 1201(f) permits reverse engineering (C13, C30), but the case they have made is for the legislator rather than for the Librarian. If, in the next three years, there is evidence that access control measures are actually impeding noninfringing uses of works that should be permitted, that evidence can be presented in the next triennial rulemaking proceeding. Such evidence was not presented in the current proceeding.

To the extent that commenters have sought an exemption to permit reverse engineering for purposes of making digitally formatted works other than computer programs interoperable (*i.e.,* accessible on a device other than the device selected by the copyright owner), it seems likely that the work will incorporate a computer program or reside on a medium along with a computer program and that it will be the computer program that must be reverse engineered in order to make the work interoperable. In such cases, section 1201(f) would appear to resolve the issue. To the extent that reverse engineering of something other than a computer program may be necessary, proponents of a reverse engineering exemption would be asking the Librarian to do what no court has ever done: to find that reverse engineering of something other than a computer program constitutes fair use or some other noninfringing use. It is conceivable that the courts may address that issue one day, but it is not appropriate to address that issue of first impression in this rulemaking proceeding without the benefit of judicial or statutory guidance.

The factors set forth in section 1201(a)(1)(C) have already been discussed in the context of audiovisual works on DVDs and video games, the two specific classes of works for which a reverse engineering exemption has been sought. Those factors do not support an exemption for reverse engineering.

6. Encryption Research Purposes

A number of commenters urged that a broader encryption research exemption is needed than is contained in section 1201(g). *See, e.g.,* C185, C30, R55, R70. Dissatisfaction was expressed with the restrictiveness of the requirement to attempt to secure the copyright owner's permission before circumventing. C153. See 17 U.S.C. 1201(g)(2)(C). Most of the references to statutory deficiencies regarding encryption research, however, merely state that the provisions are too narrow. *See, e.g.,* PH20.

As with reverse engineering, proponents of an exemption for encryption research are asking the Librarian to give them a broader exemption than Congress was willing to enact. But they have not carried their burden of demonstrating that the limitations of section 1201(g) have prevented them or are likely in the next three years to prevent them from engaging in noninfringing uses. With respect to encryption research, the DMCA required the Copyright Office and the National Telecommunications and Information Administration of the Department of Commerce to submit a joint report to Congress on the effect the exemption in section 1201(g) has had on encryption research and the development of encryption technology, the adequacy and effectiveness of technological measures designed to protect copyrighted works; and protection of copyright owners against the unauthorized access to their encrypted copyrighted works. The Copyright Office and NTIA submitted that report in May, 2000. Report to Congress: Joint Study of Section 1201(g) of The Digital Millennium Copyright Act (posted at *http://www.loc.gov/copyright/reports/studies/dmca_report.html* and *http://www.ntia.doc.gov/reports/dmca).* In that report, NTIA and the Copyright Office concluded that ''[o]f the 13 comments received in response to the Copyright Office's and NTIA's solicitation, not one identified a current, discernable impact on encryption research and the development of encryption technology; the adequacy and effectiveness of technological protection for copyrighted works; or protection of copyright owners against the unauthorized access to their encrypted copyrighted works, engendered by Section 1201(g).'' That conclusion is equally applicable to the comments on encryption research submitted in this proceeding.

Moreover, an exemption for encryption research is not focused on a class of works. See discussion above, Section III.A.3.

7. ''Fair Use'' Works

A large number of commenters urged the Register to recommend an exemption to circumvent access control measures for fair use purposes. Responding to the statutory requirement of designating a ''particular classes of works,'' the Higher Education Associations (the Association of American Universities, the National Association of State Universities and Land Grant Colleges, and the American Council on Education) put forth within a broad class of ''fair use works'' the specific classes that are most likely to be used by libraries and educational institutions for purposes of fair use. PH24. The classes are scientific and social databases, textbooks, scholarly journals, academic monographs and treatises, law reports and educational audio/visual works. A witness testifying on behalf of the Higher Education Associations explained that these works should be exempted where the purpose of using the works is fair use. T Gasaway, 5/18/00, p. 74. The Higher Education Associations also suggested that the exemption could be further limited to specific classes of persons who were likely to be fair users. PH24, at 12.

To the extent that proponents of such an exemption seek to limit its applicability to certain classes of users or uses, or to certain purposes, such limitations are beyond the scope of this rulemaking. It is the Librarian's task to determine whether to exempt any ''particular class *of works.*'' 17 U.S.C. 1201(a)(1)(B), (C) (emphasis added). See the discussion above, Section III.A.3.

The merits of an exemption for scientific and social databases have already been discussed to some extent in the treatment of ''thin copyright'' works and sole source works. To the extent that these works are not in these previously addressed classes, even though scientific and social databases can be seen to present an appropriate class, the case for an exemption has not been presented. No evidence was submitted that specific works in these named classes have been or are likely to be inaccessible because educational institutions or libraries have been prevented from circumventing them. Although the proponents of this exemption allege that if they are prevented from circumventing these particular classes of works, they and those they represent will not be able to exercise fair use as to this class of works, they have not demonstrated that

they have been unable to engage in such uses because of access control measures.

Many of the concerns raised by proponents of such an exemption are actually related to copy control measures rather than access control measures. *See, e.g.*, R75 (National Library of Medicine). If a library or higher education institution has access to a work, section 1201 does not prevent the conduct of circumventing technological measures that prevent the copying of the work.

Although textbooks, scholarly journals, academic monographs and treatises, law reports and educational audiovisual works have been mentioned as candidates for this proposed class of ''fair use'' works, proponents have failed to demonstrate how technological measures that control access to such works are preventing noninfringing uses or will in the next three years prevent such uses. In fact, it is not even clear whether technological measures that control access are actually used with respect to some of these types of works, *e.g.,* textbooks. While it is easy to agree that if access control measures were creating serious difficulties in making lawful uses of these works, an exemption would be justified, the case has not been made that this is a problem or is about to be a problem.

Application of the factors set forth in section 1201(a)(1)(C) to this proposed class of works is identical to the analysis of those factors with respect to ''thin copyright'' works discussed above (Section III.E.1) and will not be repeated here.

8. Material that Cannot be Archived or Preserved

A number of library associations expressed concern about the general impact of the prohibition against circumvention on the future of archiving and preservation. *See, e.g.,* C175, R75, R80, C162, p.26–29, 31–32; R83, p. 2–4; PH18, p.5. To some extent, these concerns may be addressed in the second of the two recommended exemptions, to the degree that faulty or obsolete access control measures may be preventing libraries and others from gaining authorized access to works in order to archive them. But more generally, libraries expressed concerns that digital works for which there are no established non-digital alternatives may not be archived. C162, p.26–29.

Because materials that libraries and others desire to archive or preserve cut across all classes of works, these works do not constitute a particular class.[16] See the discussion above, Section III.A.3. The Office is limited to recommending only particular classes, and then only when it has been established that actual harm has occurred, or that harm will likely occur. Such a showing of adverse effect on all materials that may need to be archived or preserved has not been made. Demonstration of the inability to archive or preserve materials tied to a more particular class of works would be needed to establish an adverse effect in this rulemaking. Application of the relevant factors cannot take place in gross, without reference to a specified class of works.

Even if such materials were to constitute a particular class, and harm were shown, adverse causes other than circumvention must be discounted in balancing the relevant factors. House Manager's Report, at 6. The libraries and Higher Education Associations provided examples of problems due to numerous other factors—licensing restrictions, cost, lack of technological storage space, and uncertainty whether publishers will preserve their own materials. These are adverse effects caused by something other than the prohibition on circumvention of access control measures.

The Higher Education Associations cite the frequent phenomenon of ''disappearing'' works—those appearing online or on disk today that may be gone tomorrow, *e.g.,* because they may be removed from an online database or because the library or institution has access to them only during the term of its license to use the work. See T Gasaway, 5/18/00, p. 38. This rulemaking proceeding cannot force copyright owners to archive their own works. Moreover, assuming that libraries and other institutions are unable to engage in such archiving themselves today, they have not explained how technological measures that control access to those works are preventing them from doing so. Rather, it would appear that restrictions on copying are more likely to be responsible for the problem. See R75 (National Library of Medicine's inability to preserve Online Journal of Current Clinical Trials and videotapes, apparently because of restrictions on copying); C162, pp. 25–29 (American Library Association *et al.*). Section 1201 does not prohibit libraries and archives from the conduct of circumventing copy controls. Therefore, it is difficult to understand how an exemption from the prohibition on circumvention of access controls would resolve this problem.

Some commenters have also complained that licensing terms have required them to return CD–ROMs to vendors in order to obtain updated versions, thereby losing the ability to retain the exchanged CD–ROM as an archival copy. See, *e.g.,* C162, p. 27. But they have failed to explain how technological measures that control access to the works on the CD–ROMS play any role in their inability to archive something that they have returned to the vendor.[17] In a future rulemaking proceeding, libraries and archives may be able to identify particular classes of works that they are unable to archive or preserve because of access control measures, and thereby establish the requisite harm.

Because this proposed exemption does not really address a particular class of works, application of the factors set forth in section 1201(a)(1)(C) is difficult. If particular classes of works were in danger of disappearing due to access control measures, then presumably all of the factors (with the possible exception of the factor relating to the effect of circumvention on the market for or value of the copyrighted works) would favor such an exemption. But the current record does not support an exemption.

9. Works Embodied in Copies Which Have Been Lawfully Acquired by Users Who Subsequently Seek to Make Non-infringing Uses Thereof

An exemption for ''works embodied in copies which have been lawfully acquired by users who subsequently seek to make non-infringing uses thereof'' was put forward by Peter Jaszi, a witness representing the Digital Future Coalition, and was subsequently endorsed by many members of the academic and library communities. T Peter Jaszi, 5/3/00; T Julie Cohen, 5/4/00, PH22, T Diana Vogelsong, 5/3/00. In addition, it was endorsed by the comments of the Assistant Secretary of Commerce for Communications and Information. See discussion above, Section III.B. Similar exemptions were independently proposed by other commenters. PH24 (AAU); PH18 (ALA), PH21. These proposed exemptions focus on allowing circumvention by users for

[16] The National Digital Library and the Motion Picture Broadcasting and Recorded Sound Division of the Library of Congress addressed the class of audiovisual works when it stated that, to carry out their mission, they may need to circumvent access controls to preserve these materials for the long term. However, they did not state that they have thus far had such a need or that they are aware of circumstances likely to require them to engage in such circumvention in the next three years.

[17] A related issue, CD–ROMS with faulty access controls that erroneously exclude authorized users from access, is addressed in the second exemption recommended by the Register.

noninfringing purposes after they have gained initial lawful access, although the Association of American Universities' proposal would limit the ability to circumvent after the period of lawful access to users possessing a physical copy of the work.

The proponents for this exemption fear that pay-per-use business models (using what are sometimes called ''persistent access controls'') will be used to lock up works, forcing payment for each time the work is accessed. In addition, they fear that persistent access controls will be used to constrain the ability of users, subsequent to initial access, to make uses that would otherwise be permissible, including fair uses. Without this exemption, they assert, the traditional balance of copyright would be upset, tipping it drastically in favor of the copyright owners and making it more difficult and/or expensive for users to engage in uses that are permitted today.

Therefore, these commenters propose an exemption for a class of ''works embodied in copies which have been lawfully acquired by users who subsequently seek to make non-infringing uses thereof.'' In substance, the proposal would exempt all users who wish to make noninfringing uses, regardless of the type of work, provided that they either lawfully acquire a copy or, in some versions of the proposal, lawfully acquire access privileges. This exemption, commenters argue, will equitably maintain the copyright balance. It would allow copyright owners to control the distribution of, and initial authorization of access to, copies of their works, while allowing users to circumvent those access controls for noninfringing uses after they have lawfully accessed or acquired them.

However, for several reasons, the ''class'' they propose is not within the scope of this rulemaking. First, none of the proposals adequately define a ''class'' of the type this rulemaking allows the Librarian to exempt. As discussed above in Section III.A.3, ''a particular class of work'' must be determined primarily by reference to qualities of the work itself. It cannot be defined by reference to the class of users or uses of the work, as these proposals suggest. Second, although the commenters have persuasively articulated their fears about how these business models will develop and affect their ability to engage in noninfringing uses, they have not made the case that these fears are now being realized, or that they are likely be realized in the next three years.

The Assistant Secretary for Communications and Information has endorsed this proposed exemption. In support of this proposal, NTIA made only general references to one comment, RC113, and to the testimony of Julie Cohen, Siva Vaidyanathan, Sarah Wiant, James Neal, Frederick Weingarten, and the Consortiums of College and University Media Centers (CCUMC). NTIA did not specifically identify what evidence these witnesses and commenters had provided, apart from noting that they provided ''numerous examples regarding the manner in which persistent access controls restrict the flow of information'' and testimony about ''impediments to archiving and preservation of digital works, teaching, and digital divide concerns.'' The latter concern is addressed in Section III.E.8.

The one comment cited by NTIA related to medical records that are stored in proprietary formats. RC113. It does not appear from that single comment—the only comment or testimony submitted on the issue—that the problem identified by the commenter related to technological measures that control access to copyrighted works. The commenter raised legitimate concerns about difficulties in converting data from one format to another. One can speculate that in the future, access control measures might be applied to medical data and prevent health care workers from obtaining needed access, but the commenter did not make the case that this is happening or is likely to happen in the next three years.

The testimony cited by NTIA relating to access controls that restrict the flow of information raised many fears and concerns but minimal distinct, verifiable, or measurable impacts. Of course, it is a tautology that any measure that controls access to a work will, by definition, at least to some degree restrict the flow of the information in the work. But although many of the witnesses complained about ''persistent access controls,'' they did not present specific examples of any evidence of present or likely nontrivial adverse effects causally related to such controls.[18] The testimony relating to noninfringing uses that could be adversely affected has not been specifically shown to be caused by access controls as opposed to other technological or licensing measures. There appears to be no support in the record for a finding that the cited testimony rises to the level of distinct, verifiable and measurable impacts justifying an exemption at this time.

Finally, the proposed exemption parallels elements of an approach that was considered, and ultimately rejected, by Congress during the drafting of the law. The version of the DMCA that was passed by the House of Representatives on August 4, 1998, contained a provision that required a rulemaking proceeding that would determine classes of works for which, inter alia, users ''who have gained lawful initial access to a copyrighted work'' would be adversely affected in their ability to make noninfringing uses. HR 2281 EH, Section 1201(a)(1)(B):

> The prohibition contained in subparagraph (A) shall not apply to persons with respect to a copyrighted work which is in a particular class of works and to which such persons have gained initial lawful access, if such persons are, or are likely to be in the succeeding 3-year period, adversely affected by virtue of such prohibition in their ability to make noninfringing uses of that particular class of works under this title, as determined under subparagraph (C).''

See also section 1201(a)(1)(D).

Thus, when it first passed the DMCA the House of Representatives appears to have agreed with much of the approach taken by the proponents of this exemption. But the fact that Congress ultimately rejected this approach when it enacted the DMCA and, instead, deleted the provision that had limited the applicability of the exemptions to persons who have gained initial lawful access, is clear indication that the Librarian does not have the power to fashion a class of works based upon such a limitation. Such an exemption is more properly a subject of legislation, rather than of a rulemaking the object of which is to determine what classes of works are to be exempted from the prohibition on circumvention of access controls.

10. Exemption for Public Broadcasting Entities

The Public Broadcasting Service, National Public Radio, and the Association of America's Public Television Stations described the public broadcasting entities' need to use sound recordings, published musical works and published pictorial, graphic and sculptural works in accordance with exemptions and statutory licenses under section 114(b) and 118(d) of the Copyright Act. R106. They observe that if copyright owners encrypted these classes of works, they would not be able

[18] In fact, one of those witnesses admitted that ''the law has caused little harm yet'' and that ''my fears are speculative and alarmist.'' T Vaidyanathan, 5/18/00, p. 11. Another of the witnesses admitted that librarians have not yet experienced the ''persistent access controls'' feared by proponents of this exemption. T Neal, 5/4/00, p. 42.

to make noninfringing uses of them pursuant to the statute. But their submission addressed potential adverse effects of the prohibition on circumvention, not current or even likely adverse effects. There has been no allegation that public broadcasters have encountered or are about to encounter technological protection measures that prevent them from exercising their rights pursuant to sections 114 and 118.

If public broadcasting entities were able to demonstrate such adverse impact, a strong case might be made for an exemption for sound recordings, published musical works and published pictorial, graphic and sculptural works. In part for that very reason, public broadcasters may not experience serious adverse impacts on their ability to use such works pursuant to the compulsory licenses, because copyright owners will have every incentive to facilitate those permitted uses. Indeed, the public broadcasters stated that they ''believe that the developing methods of technological protection will be deployed ''to support new ways of disseminating copyrighted materials to users, and to safeguard the availability of ''works to the public.'' *Id.*

In any event, there is no need at present for an exemption to accommodate the needs of public broadcasters.

IV. Conclusion

Pursuant to the mandate of 17 U.S.C. 1201 (b) and having considered the evidence in the record, the contentions of the parties, and the statutory objectives, the Register of Copyrights recommends that the Librarian of Congress publish two classes of copyrighted works where the Register has found that noninfringing uses by users of such copyrighted works are, or are likely to be, adversely affected, and the prohibition found in 17 U.S.C. 1201 (a) should not apply to such users with respect to such class of work for the ensuing 3-year period. The classes of work so identified are:

1. Compilations consisting of lists of websites blocked by filtering software applications; and
2. Literary works, including computer programs and databases, protected by access control mechanisms that fail to permit access because of malfunction, damage or obsoleteness.

The Register notes that any exemption of classes of copyrighted works published by the Librarian will be effective only until October 28, 2003. Before that period expires, the Register will initiate a new rulemaking to consider de novo what classes of copyrighted works, if any, should be exempt from § 1201(a)(1)(A) commencing October 28, 2003.

Marybeth Peters,
Register of Copyrights.

Determination of the Librarian of Congress

Having duly considered and accepted the recommendation of the Register of Copyrights concerning what classes of copyrighted works should be exempt from 17 U.S.C. 1201(a)(1)(A), the Librarian of Congress is exercising his authority under 17 U.S.C. 1201(a)(1)(C) and (D) and is publishing as a new rule the two classes of copyrighted works that shall be subject to the exemption found in 17 U.S.C. 1201(a)(1)(B) from the prohibition against circumvention of technological measures that effectively control access to copyrighted works set forth in 17 U.S.C. 1201(a)(1)(A) for the period from October 28, 2000 to October 28, 2003. The classes are:

1. Compilations consisting of lists of websites blocked by filtering software applications; and
2. Literary works, including computer programs and databases, protected by access control mechanisms that fail to permit access because of malfunction, damage or obsoleteness.

List of Subjects in 37 CFR Part 201

Copyright, Exemptions to prohibition against circumvention.

For the reasons set forth in the preamble, the Library amends 37 CFR part 201 as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. A new § 201.40 is added to read as follows:

§ 201.40 Exemption to prohibition against circumvention.

(a) *General.* This section prescribes the classes of copyrighted works for which the Librarian of Congress has determined, pursuant to 17 U.S.C. 1201(a)(1)(C) and (D), that noninfringing uses by persons who are users of such works are, or are likely to be, adversely affected. The prohibition against circumvention of technological measures that control access to copyrighted works set forth in 17 U.S.C. 1201(a)(1)(A) shall not apply to such users of the prescribed classes of copyrighted works.

(b) *Classes of copyrighted works.* Pursuant to the authority set forth in 17 U.S.C. 1201(a)(1)(C) and (D), and upon the recommendation of the Register of copyrights, the Librarian has determined that two classes of copyrighted works shall be subject to the exemption found in 17 U.S.C. 1201(a)(1)(B) from the prohibition against circumvention of technological measures that effectively control access to copyrighted works set forth in 17 U.S.C. 1201(a)(1)A) for the period from October 28, 2000 to October 28, 2003. The exempted classes of works are:

(1) Compilations consisting of lists of websites blocked by filtering software applications; and

(2) Literary works, including computer programs and databases, protected by access control mechanisms that fail to permit access because of malfunction, damage or obsoleteness.

Dated: October 23, 2000.

James H. Billington,
The Librarian of Congress

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BILLING CODE 1410–30–P

Federal Register

Friday,
October 27, 2000

Part VI

The President

Executive Order 13172—Amendment of Executive Order 13078, To Expand the Role of the National Task Force on Employment of Adults With Disabilities To Include a Focus on Youth

Executive Order 13173—Interagency Task Force on the Economic Development of the Central San Joaquin Valley

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Presidential Documents

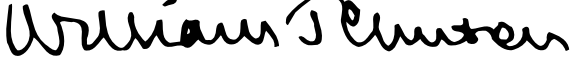
Title 3—

The President

Executive Order 13172 of October 25, 2000

Amendment to Executive Order 13078, To Expand the Role of the National Task Force on Employment of Adults With Disabilities To Include a Focus on Youth

By the authority vested in me as President by the Constitution and the laws of the United States, and in order to provide for improved access to employment and training for youth with disabilities, it is hereby ordered that Executive Order 13078 of March 13, 1998, is amended by adding to section 2 of that order the following new subsection to read as follows: ''(h) To improve employment outcomes for persons with disabilities by addressing, among other things, the education, transition, employment, health and rehabilitation, and independent living issues affecting young people with disabilities, executive departments and agencies shall coordinate and cooperate with the Task Force to: (1) strengthen interagency research, demonstration, and training activities relating to young people with disabilities; (2) create a public awareness campaign focused on access to equal opportunity for young people with disabilities; (3) promote the views of young people with disabilities through collaboration with the Youth Councils authorized under the Workforce Investment Act of 1998; (4) increase access to and utilization of health insurance and health care for young people with disabilities through the formalization of the Federal Healthy and Ready to Work Interagency Council; (5) increase participation by young people with disabilities in postsecondary education and training programs; and (6) create a nationally representative Youth Advisory Council, to be funded and chaired by the Department of Labor, to advise the Task Force in conducting these and other appropriate activities.''



THE WHITE HOUSE,
October 25, 2000.

[FR Doc. 00–27892
Filed 10–26–00; 11:42 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13173 of October 25, 2000

Interagency Task Force on the Economic Development of the Central San Joaquin Valley

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to provide a more rapid and integrated Federal response to the economic development challenges of the Central San Joaquin Valley (Valley), it is hereby ordered as follows:

Section 1.(a) There is established the ''Interagency Task Force on the Economic Development of the Central San Joaquin Valley'' (Task Force).

(b) The Task Force shall include the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Defense, the Attorney General, the Secretary of the Interior, the Secretary of Education, the Secretary of Health and Human Services, the Secretary of Housing and Urban Development, the Secretary of Energy, the Secretary of Labor, the Secretary of Transportation, the Secretary of the Treasury, the Director of the Office of Management and Budget, the Director of National Drug Control Policy, the Administrator of General Services, the Administrator of the Small Business Administration, the Administrator of the Environmental Protection Agency, or their designees, and such other senior executive branch officials as may be determined by the Task Force. The Chair of the Task Force shall rotate annually among the Secretaries of Agriculture, Housing and Urban Development, and Commerce in an order deter mined by those agency heads. Administrative support shall be provided by the then-current chair.

(c) The purpose of the Task Force is to coordinate and improve existing Federal efforts for the Valley, in concert with locally led efforts, in order to increase the living standards and the overall economic performance of the Valley. Economic development efforts shall include consideration of the preservation or enhancement of the natural environment and natural resources of the Valley. Specifically, the Task Force shall:

(1) analyze programs and policies of Task Force member agencies that relate to the Valley to determine what changes, modifications, and innovations should be considered, if any;

(2) consider statistical and data analysis, research, and policy studies related to the Valley;

(3) develop, recommend, and implement short-term and long-term options for promoting sustainable economic development;

(4) consult and coordinate activities with State, tribal, and local governments, community leaders, Members of Congress, the private sector, and other interested parties, paying particular attention to maintaining existing authorities of the States, tribes, and local governments, and preserving their existing working relationships with other agencies, organizations, or individuals;

(5) coordinate and collaborate on research and demonstration priorities of Task Force member agencies related to the Valley;

(6) integrate Federal initiatives and programs into the design of sustainable economic development actions for the Valley; and

(7) focus initial efforts on pilot communities for implementing a coordinated and expedited Federal response to local economic development and other needs.

(d) The Task Force shall issue an interim report to the President by January 15, 2001. The Task Force shall issue its first annual report to the President by September 15, 2001, with subsequent reports to follow annually for a period of 5 years. The reports shall describe the actions taken by, and progress of, each member of the Task Force in carrying out this order.

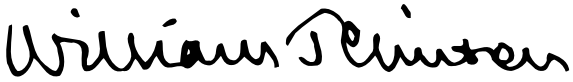
Sec. 2. *Specific Activities by Task Force Members and Other Agencies.* The agencies represented on the Task Force shall work together and report their actions and progress in carrying out this order to the Task Force Chair one month before the reports are due to the President under section 1(d) of this order.

Sec. 3. *Cooperation.* All efforts taken by agencies under sections 1 and 2 of this order shall, as appropriate, further partnerships and cooperation with organizations that represent the Valley and with State, tribal, and local governments.

Sec. 4. *Definitions.* (a) ''Agency'' means an executive agency as defined in 5 U.S.C. 105.

(b) The Central San Joaquin Valley or ''Valley'' means the counties of Fresno, Kern, Kings, Madera, Merced, Stanislaus, and Tulare in the State of California.

Sec. 5. *Judicial Review.* This order does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.



THE WHITE HOUSE,
October 25, 2000.

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT OCTOBER 27, 2000

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Commodity laboratory testing programs:
- Science and Technology Laboratory Service; fee changes; published 10-26-00

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- (N-(4-fluorophenyl)-N-(1-methylethyl)-2[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide; Extension of tolerance for emergency exemptions; published 10-27-00

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Azoxystsobin; published 10-27-00

Superfund program:
- National oil and hazardous substances contingency plan—
  - National priorities list update; published 8-28-00

GENERAL SERVICES ADMINISTRATION

Federal property management:
- Payments to GSA for supplies and services furnished government agencies; published 10-27-00

INTERIOR DEPARTMENT

Indian Affairs Bureau

Education:
- Southwestern Indian Polytechnic Institute; personnel system; published 9-27-00¶

RULES GOING INTO EFFECT OCTOBER 28, 2000

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

Digital Millennium Copyright Act:
- Circumvention of copyright protection systems for access control technologies; exemption to prohibition; published 10-27-00

COMMENTS DUE NEXT WEEK

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Historic Preservation, Advisory Council

Protection of historic and cultural properties
- Proposed suspension of rule and adoption as guidelines; comments due by 10-30-00; published 9-15-00

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Freedom of Information Act; implementation; comments due by 11-3-00; published 10-4-00

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Bering Sea and Aleutian Islands king and Tanner crab; comments due by 10-30-00; published 8-29-00
- Atlantic coastal fisheries cooperative management—
  - Atlantic Coast horseshoe crab; comments due by 10-31-00; published 10-16-00
- Caribbean, Gulf, and South Atlantic fisheries-
  - Gulf of Mexico shrimp; comments due by 11-3-00; published 9-21-00
- Caribbean, Gulf, and South Atlantic fisheries—
  - Exclusive economic zone seaward of Navassa Island; comments due by 11-3-00; published 10-4-00
  - Gulf of Mexico Fishery Management Council; hearings; comments due by 11-3-00; published 10-10-00
- Northeastern United States fisheries—
  - Mid-Atlantic Fishery Management Council; hearings; comments due by 10-30-00; published 9-27-00

Land Remote Sensing Policy Act of 1992:
- Private land remote-sensing space systems; licensing requirements; comments due by 10-30-00; published 9-18-00

DEFENSE DEPARTMENT

Privacy Act; implementation; comments due by 10-31-00; published 9-1-00

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- Arizona; comments due by 10-30-00; published 9-29-00
- California; comments due by 10-30-00; published 9-28-00
- Connecticut, Massachusetts, District of Columbia, and Georgia; serious ozone nonattainment areas; one-hour attainment demonstrations; comments due by 10-31-00; published 10-16-00

Air quality implementation plans; approval and promulgation; various states:
- District of Columbia; comments due by 10-30-00; published 9-28-00

Air quality implementation plans; approval and promulgation; various states
- District of Columbia; comments due by 10-30-00; published 9-28-00

Air quality implementation plans; approval and promulgation; various States:
- New York; comments due by 10-30-00; published 9-29-00

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
- Washington; comments due by 11-3-00; published 10-4-00

Confidential business information; elimination of special treatment for certain category; comments due by 10-30-00; published 8-30-00

Hazardous waste program authorizations:
- South Carolina; comments due by 11-3-00; published 10-4-00

FARM CREDIT ADMINISTRATION

Farm credit system:
- Organization—
  - Stockholder vote on like lending authority; comments due by 10-30-00; published 9-29-00

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Competitive bidding procedures; small business status determination; total assets test, etc.; comments due by 10-30-00; published 8-29-00

Digital television stations; table of assignments:
- California; comments due by 10-30-00; published 9-11-00
- Minnesota; comments due by 10-30-00; published 9-11-00

Radio stations; table of assignments:
- Arizona; comments due by 10-30-00; published 9-20-00
- Georgia; comments due by 10-30-00; published 9-20-00

FEDERAL DEPOSIT INSURANCE CORPORATION

Practice and procedure:
- Program fraud; civil penalties; comments due by 10-30-00; published 8-29-00

GENERAL ACCOUNTING OFFICE

Personnel Appeals Board; procedural rules:
- Employment-related appeals; comments due by 10-30-00; published 8-30-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Children and Families Administration

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- Family child care homes; program option; comments due by 10-30-00; published 8-29-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

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- Food labeling—
  - Dietary supplements; effect on structure or function of body; types of statements, definition; partial stay; comments due by 10-30-00; published 9-29-00

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Fish and Wildlife Service

Endangered and threatened species:

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Wintering piping plovers; comments due by 10-30-00; published 8-30-00
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Oil value for royalty due on Indian leases; establishment
Initial regulatory flexibility analysis; comments due by 10-30-00; published 9-28-00

INTERIOR DEPARTMENT

National Park Service

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INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
Virginia; comments due by 11-3-00; published 10-4-00

POSTAL SERVICE

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Global Express Guaranteed service; name change from Priority Mail Global Guaranteed service, etc.; comments due by 10-30-00; published 9-29-00

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HUBZone program:
Administrative and operational improvements; comments due by 11-2-00; published 10-3-00

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Labor Department designation to approve nonimmigrant petitions for temporary agricultural workers in lieu of Immigration and Naturalization Service; comments due by 10-30-00; published 8-29-00

TRANSPORTATION DEPARTMENT

Coast Guard

Ports and waterways safety:
Tongass Narrows and Ketchikan Bay, AK; speed limit; safety zone redesignated as anchorage ground; comments due by 10-31-00; published 4-7-00

TRANSPORTATION DEPARTMENT

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Income taxes:
Loans from qualified employer plan to plan participants or beneficiaries; comments due by 10-30-00; published 7-31-00

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 2302/P.L. 106–315
To designate the building of the United States Postal Service located at 307 Main Street in Johnson City, New York, as the "James W. McCabe, Sr. Post Office Building". (Oct. 19, 2000; 114 Stat. 1275)

H.R. 2496/P.L. 106–316
To reauthorize the Junior Duck Stamp Conservation and Design Program Act of 1994. (Oct. 19, 2000; 114 Stat. 1276)

H.R. 2641/P.L. 106–317
To make technical corrections to title X of the Energy Policy Act of 1992. (Oct. 19, 2000; 114 Stat. 1277)

H.R. 2778/P.L. 106–318
Taunton River Wild and Scenic River Study Act of 2000 (Oct. 19, 2000; 114 Stat. 1278)

H.R. 2833/P.L. 106–319
Yuma Crossing National Heritage Area Act of 2000 (Oct. 19, 2000; 114 Stat. 1280)

H.R. 2938/P.L. 106–320
To designate the facility of the United States Postal Service located at 424 South Michigan Street in South Bend, Indiana, as the "John Brademas Post Office". (Oct. 19, 2000; 114 Stat. 1286)

H.R. 3030/P.L. 106–321
To designate the facility of the United States Postal Service located at 757 Warren Road in Ithaca, New York, as the "Matthew F. McHugh Post Office". (Oct. 19, 2000; 114 Stat. 1287)

H.R. 3454/P.L. 106–322
To designate the United States post office located at 451 College Street in Macon, Georgia, as the "Henry McNeal Turner Post Office". (Oct. 19, 2000; 114 Stat. 1288)

H.R. 3745/P.L. 106–323
Effigy Mounds National Monument Additions Act (Oct. 19, 2000; 114 Stat. 1289)

H.R. 3817/P.L. 106–324
To dedicate the Big South Trail in the Comanche Peak Wilderness Area of Roosevelt National Forest in Colorado to the legacy of Jaryd Atadero. (Oct. 19, 2000; 114 Stat. 1291)

H.R. 3909/P.L. 106–325
To designate the facility of the United States Postal Service located at 4601 South Cottage Grove Avenue in Chicago, Illinois, as the "Henry W. McGee Post Office Building". (Oct. 19, 2000; 114 Stat. 1292)

H.R. 3985/P.L. 106–326
To redesignate the facility of the United States Postal Service located at 14900 Southwest 30th Street in Miramar, Florida, as the "Vicki Coceano Post Office Building". (Oct. 19, 2000; 114 Stat. 1293)

H.R. 4157/P.L. 106–327
To designate the facility of the United States Postal Service located at 600 Lincoln Avenue in Pasadena, California, as the "Matthew 'Mack' Robinson Post Office Building". (Oct. 19, 2000; 114 Stat. 1294)

H.R. 4169/P.L. 106–328
To designate the facility of the United States Postal Service located at 2000 Vassar Street in Reno, Nevada, as the "Barbara F. Vucanovich Post Office Building". (Oct. 19, 2000; 114 Stat. 1295)

H.R. 4226/P.L. 106–329
Black Hills National Forest and Rocky Mountain Research Station Improvement Act (Oct. 19, 2000; 114 Stat. 1296)

H.R. 4285/P.L. 106–330
Texas National Forests Improvement Act of 2000 (Oct. 19, 2000; 114 Stat. 1299)

H.R. 4286/P.L. 106–331
Cahaba River National Wildlife Refuge Establishment Act (Oct. 19, 2000; 114 Stat. 1303)

H.R. 4435/P.L. 106–332
To clarify certain boundaries on the map relating to Unit NC-01 of the Coastal Barrier Resources System. (Oct. 19, 2000; 114 Stat. 1306)

H.R. 4447/P.L. 106–333
To designate the facility of the United States Postal Service located at 919 West 34th Street in Baltimore, Maryland, as the ''Samuel H. Lacy, Sr. Post Office Building''. (Oct. 19, 2000; 114 Stat. 1307)

H.R. 4448/P.L. 106–334
To designate the facility of the United States Postal Service located at 3500 Dolfield Avenue in Baltimore, Maryland, as the ''Judge Robert Bernard Watts, Sr. Post Office Building''. (Oct. 19, 2000; 114 Stat. 1308)

H.R. 4449/P.L. 106–335
To designate the facility of the United States Postal Service located at 1908 North Ellamont Street in Baltimore, Maryland, as the ''Dr. Flossie McClain Dedmond Post Office Building''. (Oct. 19, 2000; 114 Stat. 1309)

H.R. 4484/P.L. 106–336
To designate the facility of the United States Postal Service located at 500 North Washington Street in Rockville, Maryland, as the ''Everett Alvarez, Jr. Post Office Building''. (Oct. 19, 2000; 114 Stat. 1310)

H.R. 4517/P.L. 106–337
To designate the facility of the United States Postal Service located at 24 Tsienneto Road in Derry, New Hampshire, as the ''Alan B. Shepard, Jr. Post Office Building''. (Oct. 19, 2000; 114 Stat. 1311)

H.R. 4534/P.L. 106–338
To redesignate the facility of the United States Postal Service located at 114 Ridge Street, N.W. in Lenoir, North Carolina, as the ''James T. Broyhill Post Office Building''. (Oct. 19, 2000; 114 Stat. 1312)

H.R. 4554/P.L. 106–339
To redesignate the facility of the United States Postal Service located at 1602 Frankford Avenue in Philadelphia, Pennsylvania, as the ''Joseph F. Smith Post Office Building''. (Oct. 19, 2000; 114 Stat. 1313)

H.R. 4615/P.L. 106–340
To redesignate the facility of the United States Postal Service located at 3030 Meredith Avenue in Omaha, Nebraska, as the ''Reverend J.C. Wade Post Office''. (Oct. 19, 2000; 114 Stat. 1314)

H.R. 4658/P.L. 106–341
To designate the facility of the United States Postal Service located at 301 Green Street in Fayetteville, North Carolina, as the ''J.L. Dawkins Post Office Building''. (Oct. 19, 2000; 114 Stat. 1315)

H.R. 4884/P.L. 106–342
To redesignate the facility of the United States Postal Service located at 200 West 2nd Street in Royal Oak, Michigan, as the ''William S. Broomfield Post Office Building''. (Oct. 19, 2000; 114 Stat. 1316)

S. 1236/P.L. 106–343
To extend the deadline under the Federal Power Act for commencement of the construction of the Arrowrock Dam Hydroelectric Project in the State of Idaho. (Oct. 19, 2000; 114 Stat. 1317)

H.J. Res. 114/P.L. 106–344
Making further continuing appropriations for the fiscal year 2001, and for other purposes. (Oct. 20, 2000; 114 Stat. 1318)

S. 2311/P.L. 106–345
Ryan White CARE Act Amendments of 2000 (Oct. 20, 2000; 114 Stat. 1319)

H.R. 4475/P.L. 106–346
Making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 2001, and for other purposes. (Oct. 23, 2000; 114 Stat. 1356)

H.R. 4975/P.L. 106–347
To designate the post office and courthouse located at 2 Federal Square, Newark, New Jersey, as the ''Frank R. Lautenberg Post Office and Courthouse''. (Oct. 23, 2000; 114 Stat. 1357)

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